

ZONING BOARD OF ADJUSTMENT  
268B MAMMOTH ROAD  
LONDONDERRY, NH 03053

DATE: NOVEMBER 15, 2012

CASE NOS.: 10/17/2012-2, 3, AND 4 (CONTINUED)

APPLICANT: ALFRED WALLACE, HENRY WALLACE, AND HAROLD WALLACE  
62 PERKINS ROAD  
LONDONDERRY, NH 03053-2416

VAN STEENSBURG ONE FAMILY TRUST,  
LEO AND MELANIE VAN STEENSBURG, TRUSTEES  
48 PERKINS ROAD  
LONDONDERRY, NH 03053-2416

LOCATION: 62 PERKINS ROAD; 16-3; AR-I (WALLACE) AND  
48 PERKINS ROAD; 16-1; AR-I (VAN STEENSBURG)

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR  
LARRY O’SULLIVAN, VOTING MEMBER  
JAY HOOLEY, VOTING MEMBER  
JAMES TOTTEN, VOTING ALTERNATE  
NEIL DUNN, CLERK

REQUESTS: CASE NO. 10/17/2012-2: VARIANCE TO ALLOW PROJECT PHASING TO EXCEED THE MAXIMUM NUMBER OF DWELLING UNITS LIMITED BY SECTION 1.3.3.3, AND TO PROVIDE RELIEF FROM BUILDING PERMIT RESTRICTIONS UNDER SECTION 1.4.7.2.

CASE NO. 10/17/2012-3: VARIANCE TO ALLOW A REDUCTION IN THE NUMBER OF WORKFORCE HOUSING UNITS FROM 75% AS REQUIRED BY SECTION 2.3.3.7.1.1.4 TO 50%.

CASE NO. 10/17/2012-4: VARIANCE TO ALLOW 24 DWELLING UNITS IN A MULTI-FAMILY BUILDING WHERE A MAXIMUM OF 16 UNITS IS PERMITTED BY SECTION 2.3.3.7.3.1.2, AND A VARIANCE FROM THE DIMENSIONAL RELIEF CRITERIA OF SECTION 2.3.3.7.4.5 AND THE ADDITIONAL CRITERIA OF SECTION 2.3.3.7.4.6.

PRESENTATION: Case Nos. 10/17/2012-2, 3, and 4 were read into the record with no previous cases listed.

44 JIM SMITH: The presenters are...? You have the floor at this point. You want to re-identify yourself, so  
45 we're...?

46  
47 JAY LEONARD: Yes. Thank you, Mr. Chairman. My name is Jay Leonard and I'm here with Tom Monahan. I'm  
48 a lawyer in Nashua, New Hampshire from Welts, White, and Fontaine. Mr. Monahan is the individual who is  
49 the applicant in this case. He has an agreement with the two owners that own the property. I also have with  
50 me Karl Dubay and he's the engineer that has done some of the work on the project. I think as we left it at the  
51 last meeting, we had presented some information. You had not had a chance to look at it. I know you're  
52 probably sick of hearing from me and wanna hear from others, so I appreciate that. I do want to give you the  
53 opportunity to ask any questions you want regarding the information. Just to kind of remind you of the  
54 information that we had. The information that we put forward was basically a memo from me that outlined  
55 the facts. It had the statutes. We had a study by our economist, Russell Thibeault, which found that the  
56 project as we propose...that the restrictions and the waivers of the restrictions that we propose are necessary  
57 to keep this economically viable. We also had a report from Mark Fougere who's a planner, from Rick  
58 Schutter who is the expert in construction and construction costs, from Karl Dubay. Then we had some  
59 pictures of the area. As we were finishing up the meeting, there were some questions that we're asked and I  
60 sent along some information after the meeting. I provided a website which is from the New Hampshire  
61 Housing and what it is is an article or actually a book that they published regarding guidelines for  
62 municipalities in workforce housing situations. So I think you have that. And I think you also have, by letter of  
63 mine, October 19, I provided some additional information in response to a questions regarding rental  
64 properties in Londonderry and the need for the rental properties. So that's the information you have. In a  
65 very quick and general sense, we are...the three restrictions that we're asking for waiver from are really simple  
66 restrictions in the sense that they do not...this does not relate to density, does not relate to the number of  
67 units. It is a permitted use in this and it is in an appropriate zone and also that it is the case. For the  
68 information of the abutters, and I'm sure we'll hear from some, the plan that was presented to the Planning  
69 Board, and you were provided minutes to those meetings, but the plan that was presented to the Planning  
70 Board back in, I believe it was May, was substantially different, so...and I'm not sure that the abutters have  
71 seen the new plan. I will put it on the board just to make it a little bit easier, but in a very general sense, to  
72 kind of point out those differences, the Planning Board had asked Mr. Monahan to locate as many of the  
73 buildings as he could to the rear of the property and to create as much of a buffer in the front of the property.  
74 So those are two major changes. And that's where the additional land for two buildings is actually, if you look  
75 at the plan, the two buildings in the upper right are actually on the Van Steensburg property, which was  
76 acquired after the fact.

77  
78 JIM SMITH: Do you know how to get the screen down?

79  
80 JAYE TROTTIER: Oh, it's not down. There's a switch over on the wall.

81  
82 JIM SMITH: Make it a little more presentable.

83  
84 JAY LEONARD: Thank you very much.

85  
86 JIM SMITH: Okay.

88 JAY LEONARD: A little easier to see. Just so the...so that was one of the changes that was made. We...

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90 JIM SMITH: I guess...no, it stopped.

91  
92 JAY HOOLEY: Sorry, it was about to unspool.

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94 JAY LEONARD: So the two buildings in the upper right are actually...they were located different places, but  
95 they're a result of the Planning Board asking to move as many buildings as possible back toward the rear. So  
96 that's one change. The other change is that at the Planning Board, the request was actually for buildings that  
97 had 48 units in a building. As you know, we are now at...proposing 24. And in the front, there is a house that  
98 at the Planning Board hearing, there was no real discussion of the house. The Planning Board asked that we  
99 preserve the house. So that is an agreed component of this plan. It's an old farmhouse that...we will deal with  
100 that at the Planning Board level. But just...

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102 LARRY O'SULLIVAN: But the Planning Board hasn't seen this plan.

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104 JAY LEONARD: They have not seen this plan, no. No. They will see it, hopefully, but they have not seen it yet.  
105 And also, we had...the Planning Board had asked us to preserve buffers in the front and we agreed to that. So  
106 that's different than the plan that the abutters saw at the last meeting.

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108 LARRY O'SULLIVAN: Is there a wetlands on this property, too?

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110 JAY LEONARD: There is some wetlands that...well, you can see it on...there's an aerial and you can actually see  
111 the wetlands. The wetland is relatively minor. It sort of follows the tree line. So what I mean by that, it's...the  
112 tree line is...you can see the tree line on that plan and that's about accurate. It's almost 50/50. We've tried to  
113 locate the buildings back into the trees at the request of the Planning Board, but also for that screening  
114 benefit. And there is wetland that runs across the site for that. We are not...we are complying with wetland  
115 requirements. It's a relatively minor wetland in the sense of it doesn't really interfere with this particular  
116 project. We've worked hard at that front. The only other thing, I think, is just to, as a summary, our  
117 proposal...we are asking for density that is allowed by your ordinance. The end result of the lot will be  
118 approximately 26 acres, so that...and it will include kind of the land you're looking at for the development.  
119 There is another amount of land to the south, which is the portion of the second lot. It'll end up being about  
120 16 or 17 acres. About 17 acres. I think I said last time, but if I didn't, I want to just kind of say now that that is  
121 not part of this present development effort. But there is a present plan that elderly housing will be on that  
122 southerly site. The reason I mention that is we recognize the need for a coordinated effort here on both sites  
123 in the total.

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125 LARRY O'SULLIVAN: And how big is that...how big is this lot now? Twenty six as opposed to...

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127 JAY LEONARD: So this lot will be 26 and the remaining...

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129 LARRY O'SULLIVAN: And then 15 for the other one?

131 JAY LEONARD: ...another, about 17 it is. Right now I think it's 24 and 19, so we're taking two acres from the  
132 southerly lot, the Van Steensburg lot to accommodate those back two buildings so that we could keep the  
133 open space in the front. That's primarily a result of the discussion with the Planning Board. Unless there are  
134 questions, I can leave it there. I certainly can...will try very hard to answer whatever questions you may have  
135 on information and all, but...

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137 LARRY O'SULLIVAN: So for density purposes, we allow ten...was that ten apart...no, ten units per acre. So this  
138 could possibly be 260, right? Instead of 240?

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140 JAY LEONARD: Actually, that's correct. Yes. We are under the density that is allowed...

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142 LARRY O'SULLIVAN: Right.

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144 JAY LEONARD: ...for those 26 acres.

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146 JIM SMITH: Okay. I think one thing that I kind of missed in the first presentation; you really didn't go over the  
147 five points of the law. I know it's in some of the paperwork here, but do you have a brief...

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149 JAY LEONARD: Yes.

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151 JIM SMITH: ...way that you could address those five points and probably point out the difference you would  
152 make between the various variances, if there is any?

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154 JAY LEONARD: Yes, I can do that. And I think that...why don't I do it as one. We talked a little bit at the  
155 beginning...the presentation has kind of been for all three variances at the same time because so much of the  
156 information is the same information. So basically, at the last hearing, I focused primarily on the variance  
157 hardship requirement, because that seems to be the most difficult one generally. From the standpoint of  
158 hardship, the way the statute reads is that a hardship...in order to demonstrate a hardship, we need to talk  
159 about the fair and substantial relationship that exists between the general public purposes of the ordinance  
160 and the specific application to this property. And then we have to determine whether this is a reasonable use.  
161 I think the reasonable use question is pretty straight forward and obvious. The Londonderry ordinance  
162 essentially states that this is a reasonable use because it is zoned for this use. So we're not talking about any  
163 kind of variance on that front. The most...the difficult question or...I'm not gonna say difficult, but the next  
164 question is the relationship between the regulation and the overriding purpose. So with regard to the  
165 restriction on the number of units within a building, you have the look at the purpose of that restriction. Why  
166 would a Board require that only six residential units be in a building rather than 24? Generally speaking, and  
167 we submitted some information on the statute that authorizes this kind of regulation, but generally, it relates  
168 to a desire to keep the scale within the context of the surrounding area. That has to be read in the overall  
169 context because it is a part of an inclusionary zoning and a workforce housing ordinance of the Town. It has to  
170 be read and understood with respect to this particular property in the overriding purpose of developing  
171 affordable rental housing that meets these workforce housing definitions. So when you look at that particular  
172 regulation and we provided economic information that it adds about ten percent to the cost, ten percent just  
173 on construction. And that, I think, is also supported by your Planning Department back when the discussion  
174 was before the...the several Boards. Our point of view is that that regulation does not accomplish anything. It

175 doesn't really help in reducing the scale of the building because our buildings that we are proposing are of the  
176 same scale that some in the area are. And the number of residential units doesn't relate to the scale of the  
177 building. Rather, the footprint does, the height does, and the architecture. So that particular regulation  
178 doesn't work to accomplish its purpose, which is really a secondary purpose, in the overall scheme of things  
179 because the real purpose is affordable housing. It works directly against the affordable housing because of the  
180 economics. So that's the one regulation. There is...you have a lot of information on the economics. It's clear  
181 that Mr. Thibeault found there's a...and Mr. Schutter supported...there's a big difference in the cost of building  
182 a building that is 24 units as opposed to the same number of units when the buildings are 16 units. And the  
183 reason is pretty obvious, but primarily, there are...there is much more site work for more buildings. There's  
184 much less open space, which is, again, expensive. And the economies of scale are not there when you build  
185 the smaller buildings. Those are the primary reasons. With regard to the phasing and the growth control,  
186 really the same thing...the same rules apply. You have to look at the purpose and you have to look at how  
187 does the regulation relate to that purpose in this particular circumstance? And I might also say, the  
188 circumstance here, it's an unusual one in the sense that it's multi-family and its rental. And there is a  
189 distinction between multi-family condominiums that are later rented because this is truly a rental property. It  
190 is designed and will be a rental property and the State statute and the local definitions acknowledge that  
191 there's a difference there. What the Town of Londonderry is trying to do is encourage development of a  
192 diverse set of housing opportunities. This is an unusual opportunity for the Town and it's not to be compared  
193 with condominiums, for instance. This is a rental property. It's gonna be owned by an owner. The same  
194 owner's gonna own all these units and they are intended for rental purposes. And I think that's an important  
195 distinction here. Because, of course, the affordability changes. What I mean by that is, these regulations may  
196 not make an ownership circumstance unaffordable, but they do make a rental circumstance unaffordable. So  
197 it is a special circumstance. But in any event, back to the phasing, there's quite a bit of discussion from Mr.  
198 Fougere, who is a planner, who looked at the situation here in Londonderry, looked at the schools, the  
199 infrastructure, et cetera. And it's clear that first off, there is no problem. There's no reason for a growth  
200 ordinance right now because there is not growth, first off. And secondly, the town is very able to deal with  
201 whatever new construction there is. So the fundamental reason for a growth ordinance is no longer there.  
202 But on this particular property, in this rental situation, it creates a serious obstacle to the project because it  
203 requires at a very minimum that this be built out over five years, and depending on how you read the  
204 ordinance, it might be six or seven. That time is a problem. And what time does in a situation such as this is it  
205 does not benefit the town, because it actually keeps the disruption longer, but it does add substantial cost and  
206 it adds substantial uncertainty, both...which is also gonna add a cost. From that standpoint, the goal of the  
207 ordinance, to have an organized implementation or organized infrastructure in the city...in the town, there's  
208 no real...that's protected already. It is organized. There is no problem with that right now. So the purpose of  
209 that growth regulation is no longer there. It doesn't get accomplished by applying this to this particular  
210 circumstance. And there are many indirect and adverse consequences that weren't planned and aren't  
211 intended, most obvious being that it adds substantial cost to what is supposed to be affordable housing. And  
212 then the last restriction that we're seeking a waiver on or a variance from is the requirement within  
213 the...again, within the inclusionary zoning and within the workforce housing rules that says that if you do a  
214 workforce housing project, you have to have 75% as workforce units. You'll see in Mr. Fougere's report that  
215 he did a survey of surrounding areas in other towns and 75% is extremely high as compared to other towns  
216 and the reason for that is that when you...sometimes workforce housing is below market pricing and you have  
217 to be careful that you don't provide a disincentive for a developer to do...for a developer to provide workforce  
218 housing. So, for example, you have to be careful that a developer is not gonna make more profit by having

219 fewer units because, of course, the whole goal of your ordinance is to provide affordable and diverse housing  
220 and that requires a low cost. So in this particular circumstance, Mr. Thibeault did that analysis and he basically  
221 made two assumptions. He said that if you are to require 16 units per building instead of what we request, 24,  
222 and if you are to require 75% to be workforce housing as opposed to 50% which we are proposing, then in  
223 effect, the cost associated with this project will go up around 13 or 14%, which will make it economically not  
224 viable. It doesn't work. Part of the difficulty with designating a percentage for workforce housing is that it  
225 affects both the price and the population who can use or rent those properties. So you're restricting not only  
226 the price, but also the potential renters. And we've...so we've provided the economics of that and we've  
227 provided the survey for Mr. Fougere and in effect, what is clear is that the requirement of 75% actually is a  
228 direct disincentive to provide workforce housing because it doesn't allow the developer to make a return,  
229 basically, and that's what Mr. Thibeault's analysis shows. I think you'll find that 50% is a relatively high  
230 number. And that we're trying to be very reasonable on that front. The reason that we can go that high is  
231 because right now, rents...you know, the affordability price is actually relatively high also because of  
232 circumstances here in western Rockingham county. But in any event, that is a high percentage. It...in effect,  
233 all of the additional units that are being allowed under the workforce housing ordinance will be workforce  
234 housing. Now...so that...those are the three kind of hardship discussions that we've talked about. They're also  
235 all read within the context of...and it starts to get a little bit repetitive, but you as a Board are permitted to...in  
236 determining hardship, you're permitted to look at the umbrella of workforce housing. Workforce housing is a  
237 State mandate that says that the Town will provide a fair share of affordable and diverse housing, including  
238 rental housing. And the Court has said that within that context, if you find this property is particularly  
239 appropriate, then that's a good reason to allow these waivers. In other words, if a Court might allow this  
240 project anyway, without regard to a variance, you as a Zoning Board can take that into consideration and it's  
241 appropriate to grant the variance under those circumstances and this particular site has been identified by the  
242 Londonderry task force on housing as one of several that is appropriate for high density housing. Mr. Dubay  
243 has looked at all those sites and he has said in his analysis that this particular site is especially good for multi-  
244 family rental housing because the property has good soils, good slopes, and especially good access and  
245 infrastructure such as water and sewer. So I think all of that together supports the hardship argument for all  
246 those three requests. With regard to the other components of the zoning variance, you have the spirit of the  
247 ordinance is observed. And I think that's probably the...I mean, that's probably pretty obvious, but the spirit  
248 here is to provide affordable rental housing at the directive of both the Housing Task Force and later the Town  
249 through its ordinance. The ordinance actually says that the Town wants to encourage developers to provide  
250 affordable housing and specifically, affordable rental housing. I believe this is the only rental project that has  
251 been proposed in the Town of Londonderry for some time. I know that...well, in any event, it is definitely  
252 within the spirit of the ordinance to allow this project to go forward because that is the stated purpose of the  
253 ordinance. Similarly, substantial justice is done. Substantial justice, from a legal sense, means that any  
254 restriction is justified. There's good reason. It accomplishes something. Or the flipside of that is when you  
255 have a restriction that doesn't accomplish a legitimate purpose of the town and imposes harm on the owner,  
256 that's not substantial justice. So here, we have a circumstance where we really have three, what I'm gonna  
257 say are very...they're not major restrictions in the sense of supporting the overall goals of workforce housing  
258 or the goals of the zoning scheme. They are lesser restrictions and as it turns out, on this particular property  
259 and this particular rental project, they prevent it, which is a serious and adverse consequence that's not  
260 justified by the benefit that the Town were to get. The other thing...the other requirement is that the values  
261 of the surrounding properties are not diminished and that requires us to look at, "Well, what are we really  
262 asking for?" And we're really asking for three things. A building that has more units but is the same size, so

263 it's not affecting the scale of the building, it's affecting the number of units in the building. We're asking for a  
264 shorter phasing period which...and then we're asking for a reduction in the percentage of workforce housing  
265 units. None of those relate to the project itself. It doesn't...it's not gonna change the physical look. The only  
266 thing that it actually does is it's gonna speed up the whole construction process, as I mentioned, and it will  
267 reduce the interruption in the area. So it's very hard for me to understand at all how it could possibly  
268 adversely affect values. We're not talking about a use because this use is permitted. So the question isn't  
269 whether the use will change values or not. The question is do these variances change the value? The other  
270 thing I think is very important to mention on this particular issue is that, and we've said a number of times that  
271 our plan is to go to the Planning Board. The Planning Board has extensive regulations and authority to work  
272 with the applicant on things like screening, et cetera, and also on architectural for the building. We plan to  
273 go through that process and satisfy the Planning Board. They will be looking at those kinds of things that will  
274 be helpful in terms of making sure that this is done appropriately in this particular location, so that's also part  
275 of that whole effort to be sure that we don't reduce anybody's value, but there's nothing to suggest in any  
276 way that by asking for a phasing in three years as opposed to five or six, or 50% as opposed to 75%, or even 24  
277 units as opposed to 16, they're not gonna have an adverse effect on value. I think that covers them all. The  
278 variance will not be contrary to the public is very similar to the spirit of the ordinance. We are actually  
279 accomplishing what the Town has said is in the public interest; that is providing affordable rental housing on  
280 the longer term. This is rental housing that is committed for at least 40 years as rental housing. I'm not sure if  
281 you...if that answered your question.

282  
283 JIM SMITH: I just wanted to get that into the record so that...

284  
285 JAY LEONARD: Right. Yeah.

286  
287 JIM SMITH: ...be able to point at it.

288  
289 JAY LEONARD: Okay.

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291 JIM SMITH: Now at this point, do you have anything else you would like to present or would you want to open  
292 it up to questions from the Board?

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294 JAY LEONARD: I'm happy to open it up to questions from the Board.

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296 JIM SMITH: Okay. Neil?

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298 NEIL DUNN: Before we go there, I'm still looking for clause 2.3.3.3.2 that says that they can't come to the  
299 Zoning Board, it's the Planning Board. I still haven't found a document that says that we can rule on the 16 to  
300 24. And I'm not finding it in here?

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302 JAY LEONARD: May...?

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304 JAYE TROTTIER: The Attorney already determined that.

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306 NEIL DUNN: But I'm not finding that document and I haven't seen it, so I wanted to look at that, I guess.

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JAYE TROTTIER: It wouldn't necessarily be in there.

NEIL DUNN: Oh, okay. Well that's...that was one of my bigger concerns from last month. So you think it's in here? The big case...?

JAYE TROTTIER: It probably wouldn't be.

JAMES TOTTEN: That gets emailed out.

JAY LEONARD: If I may on that, Mr. Chairman? The difficulty here is that the Town has an extensive ordinance that, in a general sense, affords the Planning Board most of the opportunity for review. But the way the ord...but that is a...it is a zoning ordinance. It was adopted as a zoning ordinance...

NEIL DUNN: Mm-hmm.

JAY LEONARD: It's part of the zoning. And because the ordinance is very flexible in most regards, then the Planning Board has the authority on the waivers. But there are two or three, and the three that we have listed are those kinds of restrictions that the ordinance itself does not give the Planning Board the authority. So when the Planning Board doesn't have the authority to waive it, the only people who can do that are the variance...are through a variance. It's like any other flexible-type zoning. And so the reason I have to come to the Zoning Board for these three items is because there is a specific requirement that 75%, phasing, and then no more than 20 units per building. So because of that express statement and because it is a zoning ordinance, my remedy is to here.

NEIL DUNN: So me, as a Zoning Board person, I'm reading a ordinance, the workforce housing portion of our ordinance in Section 2.3 and so on, and it seems to me that it's a very new ordinance and to deal with the spirit of the ordinance as you present it here, and it looks very specific to me that the Planning Board's saying, okay, 16, if they agree, they can do 20 and after that, that you couldn't come to us and say now I want 24, 28. So to me, it's very clear in the spirit of the ordinance that we shouldn't even be looking at that. That's between the Planning Board and...I guess that's where I'm looking for help from the Board here. I still don't see how complying with the spirit of the ordinance just on that one case, I think it's the 3...-3, why we should even be ruling on it if it's so specific and it's such a new ordinance, how do we get past the spirit of the ordinance?

JAY LEONARD: So the...you have to look at the purpose of the ordinance, though, which is stated in 2.3.3.1.

NEIL DUNN: Mm-hmm.

JAY LEONARD: And that expresses the spirit. It doesn't say that the goal of this ordinance is to restrict the number of units in a building. What it says is that the goal of this section is to encourage and provide the development of workforce housing. So...



350 NEIL DUNN: Within the existing ordinances and provisions that we already have set forth and again, getting to  
351 that, it's very new.

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353 JAY LEONARD: Yeah, but you don't...you don't regulate the number of units in a building just because that's a  
354 good idea. You do that in the context of trying to accomplish workforce housing and then you may have a  
355 secondary purpose of assuring that that workforce housing is at a scale appropriate to the area. But the real  
356 goal is to provide workforce housing. And that's the spirit of the ordinance. And you'll see right in the  
357 purpose, it says "diverse supply of home ownership and rental opportunities." And the rental opportunities is  
358 an important part because you don't have many here in town.

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360 LARRY O'SULLIVAN: We haven't had one here...

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362 JAY LEONARD: Probably. Probably not.

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364 LARRY O'SULLIVAN: ...on this Board of this magnitude or any major magnitude.

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366 JAY LEONARD: Yeah. Yeah.

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368 LARRY O'SULLIVAN: Typically, if you don't mind me interrupting for a minute...

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370 NEIL DUNN: No, no, no.

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372 LARRY O'SULLIVAN: ...which I think, typically we would...we receive information from applicants. Our  
373 applications are based on something that has already gone through the Planning Board. And the process that  
374 we have in place is you go through the site review stuff, they have all these cost analysis that they do or they  
375 have their experts do. What it seems to me to be is, and towards Neil's point here is, if we've got all these  
376 things that we've just recently put into our zoning ordinances, and they were hammered out over a number of  
377 years, and I do mean hammered out over a number of years, how can somebody take an application and say  
378 it's in the public interest to do it in excess of the number that you're allowing over a shorter period of time  
379 than you're allowed, with no controls over growth and oh, by the way, we're gonna have the reduction in the  
380 number of cost effective or lost cost or low income or whatever you wanna call the affordable housing part of  
381 that, without going through the Zoning...I'm sorry, the Planning Board? Because in my opinion, they're the  
382 ones that would say, "No, you can't do 24. Show me that it's economically viable to do 24 and not 16."  
383 Because they, in my opinion, and my experience has been they get an expert. They go out and they find a  
384 third party who says, "Okay, give us a cost basis projection for this type of a project." Now you've provided  
385 one. You're also saying, you know, you're asking for it, so it's...that you have a vested interest in it. That's why  
386 they, the Planning Board, uses that third party. They have no vested interest. We're gonna...they'll be paid  
387 regardless, whether you pay them or the Town pays them or somebody else pays them to do that analysis. Is  
388 that something that you're proposing when you ask this of this Board for us to tell you, okay, we wanna use  
389 the Planning Board's experts to do this cost analysis, for example, for you. For us. Because when we did the  
390 telephone, I'm sorry, the cell phone tower, we had experts come in. Third party experts. The Planning Board,  
391 the group that organize that, our Town Planner came and said "This is the group that they use and this is the  
392 type of thing that you should ask for," and we don't have that here. We're not using those resources. The  
393 Town has very limited resources regarding expertise in that area, so we outsource it. Okay? So those are

394 kinds of things that normally, we'd have them here and then they'd say, "Yeah, they can't afford to do this  
395 with 24, with less than 24." All of a sudden, our zoning ordinance, you come here for relief on as opposed to  
396 proving...us proving that, yeah, you can't do this for less than, you know, make a buck at it for less than 24  
397 units per...or 240 units in ten. So that's where I'm coming from this economic analysis thing. I don't have the  
398 expertise to do it and that's why I had any questions to begin with about whether we have the abilities as a  
399 Zoning Board in this town to do that. Because I don't have that information. Yes, I reviewed your information.  
400 I think we've all reviewed your...you know, the...as much as you provided. And it's all extremely interesting  
401 stuff, there's no doubt about it, and it looks like somebody's gone to a great deal of detail putting all these  
402 maps and charts and graphs and what have you together, it's just that I don't know what's fact and what  
403 you're just presenting as you'd like to see. So I have some urgency in my requirement to get more  
404 information. I don't think we've had enough, but...in my opinion. We need more...we have to do some  
405 research on that.

406  
407 JIM SMITH: Larry...

408  
409 LARRY O'SULLIVAN: Go ahead.

410  
411 JIM SMITH: Okay, here's where I think part of our problem is. We're not absolutely sure that we can give a  
412 variance to go from 16 to 24. I think what Larry is trying to suggest is should you be going to the Planning  
413 Board first or coming to the Zoning Board first? And I think that's part of what you're trying to say.

414  
415 LARRY O'SULLIVAN: Well...

416  
417 JIM SMITH: Because the Planning Board, if they wanted to go to 24, if I understand the process, they would  
418 either have to say yes, it's a good idea...

419  
420 LARRY O'SULLIVAN: Or w...

421  
422 JIM SMITH: We'll rewrite the ordinance to allow it, because they can't give a waiver to go to 24.

423  
424 LARRY O'SULLIVAN: They can't...okay.

425  
426 JIM SMITH: They can only go to 20.

427  
428 LARRY O'SULLIVAN: Right.

429  
430 JIM SMITH: Or they would then, at that point say, "You have to go back to the Zoning Board..."

431  
432 LARRY O'SULLIVAN: Any apply.

433  
434 JIM SMITH: ...to get a variance."

435  
436 LARRY O'SULLIVAN: Right, but at that point, they would also have a great deal more information than we've  
437 got, in my opinions, than...from third party, neutral type resources.

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JIM SMITH: Okay, Jay?

JAY HOOLEY: I'm just gonna make a general observation that there are many cases where we'd probably like to see more information. We're limited to the information that is presented to us.

LARRY O'SULLIVAN: I understand.

JAY HOOLEY: And at some point, our job is to take the five points for each of the variances and based on the information that we had available to us presented in the meeting, determine if we think they meet those five points. Would that determination be changed if we had hypothetically been provided other different or more information? Possibly in any case, but...

LARRY O'SULLIVAN: Sure, because we have RSAs as well. The State is requiring us to do workforce housing and that's an absolute, as far as I'm concerned.

JAY HOOLEY: Right, but...

LARRY O'SULLIVAN: But the other thing that isn't factored into this at all is what else is going on. There's no mention of what Perkins Road's gonna be used for to Woodmont. Perkins Road is going to be *the* route to and from Woodmont. And you know how big Woodmont is, so if there's a character issue of an area or if there's a traffic safety, health issues, you know, right in the middle of it. Right there. So, as far as I'm concerned...

JIM SMITH: Those would all be Planning Board issues.

LARRY O'SULLIVAN: What, traffic and safety?

JIM SMITH: Yeah.

LARRY O'SULLIVAN: On this property?

JIM SMITH: Well, I mean, they're gonna have to...

LARRY O'SULLIVAN: What's the impact...? There's no impact fee after this is done, for example. Or how about this, here's another thing that I had in mind; there's 75 opening in North School right now. And it's 240 apartments being suggested here.

JAMES FABIANO: You got it.

LARRY O'SULLIVAN: Are you gonna build your own school?

[Applause from the audience].

JAY LEONARD: May I respond?

482  
483 JIM SMITH: No...

484  
485 LARRY O'SULLIVAN: I'm not being...trying to be a wise guy about it, I'm just trying to figure out how that isn't  
486 economic...how is that affecting the rest of the town?

487  
488 JAY LEONARD: Well...

489  
490 LARRY O'SULLIVAN: To me, that seems as if...I know that workforce housing's coming there and I think it's a  
491 great idea. And I think 240 isn't an unreasonable number. But that's why the phasing part of it. So that we  
492 can all do our planning for...how are we gonna get more students into North School? How are we going to be  
493 affecting Woodmont's coming into town. They're not building any schools. We have another fairly large,  
494 older...adult, I guess, development coming on the south end of town. A fairly large one. How is all that gonna  
495 impact safety, traffic? I mean, those are the kinds of things that *this* Board has. You guys and your planning  
496 people, do they know Londonderry at all? I mean, that's why we want more information. I want more  
497 information. I don't wanna discourage workforce housing in the town. I think the plan that we have in place  
498 seems to be reasonable. You guys are the first test of the plan. I think the place, the location, is the perfect  
499 loc...is a great location for it. Workforce housing there means my kids can move back into Londonderry, right?  
500 That's what it means. I'd love to live in a nice place like that. However, the point of the matter is, [indistinct]  
501 lots more to the relief, the 50 versus 75%, that I don't understand. I just simply don't understand how a cost  
502 analysis can be performed when your average prices, you're shooting for \$1,000 or \$1,100 per unit in the  
503 workforce housing project, yet across the street at...I keep calling it Granite Ridge, but it's...

504  
505 JAMES TOTTEN: Vista Ridge.

506  
507 LARRY O'SULLIVAN: Vista Ridge. At Vista Ridge, the average rents are about \$1,000. Right? How does that  
508 match? How does a workforce housing...how does that not qualify for workforce housing? I'm missing  
509 something out of all of that. My understanding reading through all this stuff is everything is very price  
510 oriented. Everything is, you know, market this and the value of that. And I don't understand that stuff. That's  
511 why I want some experts to help me. To help me make the determination that "Yes, the viable way to do this  
512 for this organiza...your company to make a buck at this thing is this, is the amount of workforce housing that  
513 will make it profitable for you. And this is the way it should be done." So that said, that's how I address the  
514 items in front of us.

515  
516 JIM SMITH: Jay?

517  
518 JAY HOOLEY: In your first request, 10/17/2012-2, the second portion, which is relief from 1.4.7.2, and I'll  
519 restate this, make sure I've got it right in my mind, that is where you're asking, should it be determined that  
520 we are not or no longer in a period of sustainable growth and the Growth Management Ordinance is, be it  
521 activated, enacted, or comes into play, you're asking for relief that that not apply to you?

522  
523 JAY LEONARD: That's correct.  
524

525 JAY HOOLEY: Okay. On that particular point, could you explain how...if the determination is, in fact, made  
526 that we are not in a period of sustainable growth, how not limiting your particular development unlike others  
527 is complying with the spirit of the ordinance? I'm a little stuck on that one.  
528  
529 JAY LEONARD: Well...  
530  
531 JAY HOOLEY: That particular ordinance....  
532  
533 JAY LEONARD: Yeah.  
534  
535 JAY HOOLEY: I understand the workforce housing and the general goal, but the Growth Management  
536 Ordinance is to say we must limit our growth to a sustainable level and my question is how are we maintaining  
537 the spirit of that portion of the ordinance with...  
538  
539 JAY LEONARD: Okay.  
540  
541 JAY HOOLEY: ...the second half of the first request?  
542  
543 JAY LEONARD: So the first step in that analysis, I would suggest, is to take a look at the authority that towns  
544 have regarding growth restrictions and growth management. And what the State statute requires is that in  
545 order to impose growth restrictions, the Town has to demonstrate...it can...Growth Management Ordinance is  
546 only appropriate if there is a demonstrated need to regulate the timing of development based upon the  
547 municipalities lack of capacity to accommodate anticipated growth. So we don't have that right now. There is  
548 no incapacity to accommodate growth. So the first step, I would say, being perfectly frank here, is that you  
549 shouldn't have a growth ordinance now anyway because the very next section of the State statute which  
550 authorizes these things says that an ordinance adopted under this section shall include a termination date and  
551 shall restrict projected normal growth no more than is necessary to allow for orderly and good faith  
552 development of municipal services, so we don't have that circumstance now. So I think that's an important  
553 statement.  
554  
555 LARRY O'SULLIVAN: I don't think anyone's arguing with that, though.  
556  
557 JAY HOOLEY: Yeah, no, we're only...my questions is...  
558  
559 LARRY O'SULLIVAN: Yeah, we agree with that.  
560  
561 JAY HOOLEY: ...should that determination be made...  
562  
563 JAY LEONARD: Well the reason I say that is that is the purpose.  
564  
565 JAY HOOLEY: Yup.  
566  
567 JAY LEONARD: And we can't say that the local ordinance accomplishes that purpose 'cause it's not...there is  
568 no purpose right now. There is no...there is nothing to manage. But the other thing that has to be said here,

569 and I agree that this is...this is all new and the whole relationship between a variance and workforce housing is  
570 new. And I appreciate that and I appreciate the discussion that we're having. The variance request, our  
571 request for a waiver, basically, of a restriction. And that request, you look at the purpose of the restriction  
572 and you look at the effect on a town, on a landowner, but also on this particular project. And because growth  
573 restriction and time is so important to the affordability, you also have to look at how it affects this project  
574 specifically. And in that particular circumstance, if we...let's say that this Board allowed us to proceed with  
575 three years of phasing. If I didn't ask for an exception of the growth ordinance, even though it's not in place,  
576 then two years down the road, there may be a restriction on that last phase, which may not even allow us to  
577 build one building. So the way growth ordinance works, if you have buildings of 16 or 24 or whatever, you  
578 can't build four units, and there may only be four permits permitted. You can't build...you can't build this  
579 thing over ten years because the ten year timeframe makes it...doesn't work. No bank's gonna finance it, it's  
580 not gonna work. The cost of construction. Just think for a moment about what a one or two percent increase  
581 in the cost does over three years as compared to six or seven. It's a very substantial difference. This is a  
582 \$30,000,000 project. So that's the reason why that particular ordinance...it doesn't accomplish its underlying  
583 purpose and it has particular adverse impacts on this project and this site, which has been identified as an  
584 appropriate site for multi-family rental housing. I appreciate that it's a different argument because we have a  
585 different kind of project. But that is the...that's the relationship that does not...there is no substantial  
586 relationship to the goals that are appropriate for the zoning.

587  
588 LARRY O'SULLIVAN: For the growth management, you mean.

589  
590 JAY LEONARD: For that, yes. For that particular portion.

591  
592 JIM SMITH: Okay, Jay has an additional question.

593  
594 JAY HOOLEY: In a similar vein, in your third request, second portion where your seeking relief from 2.3.3.7.4.5  
595 and 2.3.3.7.4.6, that is the...there'll be a conditional use permit to do the workforce housing. Within that,  
596 there's a conditional use permit, I believe, to increase from 16 units to a number that is greater. You've  
597 indicated in an earlier presentation at the prior meeting that the reason you're looking for a variance on that is  
598 that you don't meet the criteria that are named in order to grant that conditional use permit. Once again, I'd  
599 ask how is that meeting the spirit of the ordinance if they're saying, "Well, if you happen to have this set of  
600 particular adverse conditions, you may increase, but you stated directly you don't have that set of conditions.  
601 In fact, in the...you head a presentation of about ten or eleven properties and this one property was, you  
602 know, the best of all of them. Therefore, not being particularly unique in its difficulty, I guess, to develop it.  
603 Does that make sense?

604  
605 JAY LEONARD: Yes, very much so.

606  
607 JAY HOOLEY: Okay.

608  
609 JAY LEONARD: And I appreciate the question because it...I think it goes to a number of the questions that we  
610 have over on this side. So is the...the way the ordinance is set up, it's very specific about certain restrictions  
611 and there is no flexibility on the part of the Planning Board, which is why I have to come here. And I might  
612 also add; in that guide book, I encourage you to take a look at that again, because it actually says right in the

613 guidebook that when a town provides an opportunity for workforce housing, and often requires that you go to  
614 the Planning Board, there are still times when you must start at the Zoning Board because it is specifically a  
615 zoning ordinance and if you need relief from the zoning ordinance, you have to go first to the Zoning Board.  
616 But with regard to this particular question, the scheme is that the Planning Board has a conditional use permit  
617 and the particular section that I've asked for relief from says that the maximum is 16. It then goes on to say  
618 under some very special circumstances, you may be able to increase that to 20. But those circumstances are  
619 basically lousy pieces of land. It does not a circumstance where the requirement of 16 causes it be  
620 economically unviable. That's a different set of circumstances. This particular ordinance doesn't allow that.  
621 Now, just because it does allow for some flexibility suggests to me that the restriction itself, in other words, 16  
622 as opposed to 20 or 24, is not so important to the goals of the overall ordinance. There is flexibility even on  
623 lousy pieces of land. When I say "lousy piece of land," I only mean under the terms of the ordinance. It talks  
624 about steep slopes, it talks about wetlands, it talks about difficult soils, those kinds of things. Those kinds of  
625 things are...the Planning Board has authority to provide waivers. Here, we're in a....but I'd also say that those  
626 are, as a whole, the ordinance is impacting this project. And if you get a difficult piece of property, you're not  
627 gonna be able to have a rental project because the costs associated with that difficult piece put it over the  
628 affordability side of things. I think your questions also brings up, you know, we do have two paths to approval  
629 here. I've requested the variance from these three things, but you also have the second path, which is even  
630 less familiar, I would suggest, and that is the whole workforce housing statutory scheme in itself. And under  
631 that scheme, any land use board has the right to waive a restriction if it causes uneconomically viable and  
632 doesn't accomplish the purposes that we're trying to accomplish, i.e. workforce housing. So you have to kind  
633 of read these things. The very first thing you have to do is look at how does the ordinance affect this project in  
634 a total sense? Overall, there's not a seriously adverse effect of important restrictions, except these three and  
635 the...my suggestion to you is that they don't really matter in terms of the overall zoning scheme. I know that  
636 the Board is concerned because the Town spent so much time on this ordinance and I think that's a legitimate  
637 concern to express. The ordinance is gonna stay in place. The exceptions are only for this project and they're  
638 only because it's a rental project. And it's only that we're gonna try to accomplish one of the very primary  
639 goals of this overall inclusionary zoning ordinance; that is to provide rental housing. So all these things stay in  
640 play if it's an ownership project, if it's not multi-family, et cetera. This is really just for this one site and it's  
641 because it has an unusual impact on this one site given the goal of providing affordable rental housing. I'm  
642 sure that probably...I don't know if it gave you the answer you're looking for, but...

643  
644 NEIL DUNN: Mr. Chairman, if I may? When you're talking to the one scenario, whether it's the 50% or 75%  
645 occupancy rate, you gave us some numbers here...

646  
647 JAY LEONARD: Mr. Thibeault...?

648  
649 NEIL DUNN: I'm sorry, not occupancy rate. A 50%...

650  
651 JAY LEONARD: Yes. Yes.

652  
653 NEIL DUNN: workforce rentals versus 75% workforce rentals. The numbers you gave us on this page; I don't  
654 see a big impact between, you know, 1.9 and 2.1, and it looks like a profit at the bottom line either way.  
655 There's no number on the pages, so I apologize for that, but...

657 JAY LEONARD: Now, do you mean the Russell Thibeault study?

658  
659 NEIL DUNN: Yes.

660  
661 JAY LEONARD: Okay, so in a general sense, what he found was that there was a 13% cost associated with  
662 these two restrictions.

663  
664 NEIL DUNN: Okay, I have that, but the bottom line it's getting to; that's yearly profit?

665  
666 JAY LEONARD: Well, he then...what he did in his study was he took a look at the project, the costs associated  
667 with the project, and he backed it out. And I think you'll see his conclusion was that the...if the cost...the cost  
668 associated with 16 unit buildings and 75% would be such that there would not be a return and if the cost was  
669 over \$30,000,000, no one would do the project. And this cost is over \$30,000,000. So that's how he did it, he  
670 kind of did it an economist's point of view and I recognize that it's not...but that's how he got there. He had a  
671 rate of return...

672  
673 NEIL DUNN: Right, which...

674  
675 JAY LEONARD: ...and he determined what you could spend and still have that rate of return and the number is  
676 about \$30,000,000, whereas the cost is \$33,000,000. So the only way to...the only way to get a reasonable  
677 rate of return is to have a lower cost. And it's...and it would be associated with a 24 unit building and a 50%.

678  
679 NEIL DUNN: So now you're asking this Board to determine whether that 6.5% overall capitalization rate, is  
680 that your rate of return, is that what you're calling your rate of return?

681  
682 JAY LEONARD: Well, capitalization rate, yes.

683  
684 NEIL DUNN: I mean, it's showing it here and what you present at 75%, a million-nine and change is 6.5%  
685 capitalization rate of return and if we went to the 50% model, then it's \$2,000,000 and the 6.5 would be  
686 \$33,000,000, so to me, you know, it looks like they're both providing the same rate of return.

687  
688 JAY LEONARD: Yeah, they are, but one of them costs too much, so you don't get that return.

689  
690 NEIL DUNN: But we don't have that subtracted out of that anywhere. The package...I'm having trouble saying,  
691 okay, if I subtract that all out and look at...

692  
693 JAY LEONARD: I think you'll see that's his conclusion in...he tells you how he arrives at his rate of return, or  
694 capitalization rate. That's on page eight. And then he... he calls it "supportable investment," that's the term  
695 that Mr. Thibeault uses. And if there is 75% workforce housing, the supportable investment is \$30,600,000.  
696 But, of course, it costs more than that. So you can't...it's not economically viable. Whereas if there's 50%  
697 workforce housing, the supportable investment is \$33,000,000 and that is a number that's within the cost that  
698 we have...we expect.



700 NEIL DUNN: Okay, well I don't see where that's supported because it says 75% and the supportable  
701 investment would be \$30,000,000.

702  
703 JAY LEONARD: Yeah. But the total cost is more than that.

704  
705 NEIL DUNN: And where is that total cost in our package?

706  
707 JAY LEONARD: The total cost is actually earlier on. On page four, Schutter Development has estimated  
708 development costs of \$37,000,300 if it's 15 buildings with 16 units and 75% or \$33,000,000 if it's ten buildings,  
709 four units each, and 50%.

710  
711 NEIL DUNN: Then I saw somewhere else a 37 number. Did you just say...?

712  
713 JAY LEONARD: Yeah, the \$37,000,300 is if there's 15 buildings. And then in the packet that I gave you with my  
714 memo is Mr. Schutter's breakdown of all of those expenses. It's a spreadsheet and a grid.

715  
716 NEIL DUNN: Mm-hmm.

717  
718 JAY LEONARD: Mr. Chairman, one other thing that I probably haven't responded to yet; one of the reasons  
719 that it's appropriate to come to the Zoning Board first is this whole building idea. In order to go to the  
720 Planning Board, we would need to be designing site plan and buildings and of course, that doesn't make sense  
721 until you know what you're trying to design, so...and that's why we are leaving most of the questions for the  
722 Planning Board, but these that they do have discretion on, we're here at the Zoning Board. What will happen,  
723 just so it's clear to everybody in the room here, what will happen is, should this Board allow us to proceed  
724 with a 24 unit building, we will then make that a part of our presentation to the Planning Board and they  
725 will...we have to go, for instance, to the, I believe it's called the Heritage Commission. We have to have that  
726 reviewed by the Planning Board through the planning process and all of that, there may be some give and take  
727 on the actual architectural, and that's the reason for asking right now for the 24.

728  
729 JIM SMITH: Okay, while everybody is talking about these things, just to go back to one point; do you have any  
730 projections on the number of school aged children this type of development would project?

731  
732 JAY LEONARD: You know, off the top of my head, I'm not sure. I believe it's in Mark Fougere's report and I  
733 know that it is a very small number. Nowhere near 75. I know that it's going to be an easy number to  
734 estimate because Vista Ridge is the same number of units and basically the same size units and I don't know  
735 how many there are there, but the school system is not at risk at all in any fashion from this project.

736  
737 LARRY O'SULLIVAN: By itself, this project.

738  
739 JAY LEONARD: That's right.

740  
741 LARRY O'SULLIVAN: But that's my point, is...

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743 JAY LEONARD: Well...

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LARRY O'SULLIVAN: ...for the growth ordinance or growth maintenance part of it is, there's other projects.

JAY LEONARD: Well that may be, but the Town really, you know, you have to...

LARRY O'SULLIVAN: That only exists, by the way, as a trigger.

JAY LEONARD: Yeah.

LARRY O'SULLIVAN: We have a growth percentage...

JAY LEONARD: I understand.

LARRY O'SULLIVAN: ...that is met. As soon as that is met, that's when the Growth Management Ordinance [indistinct].

JAY LEONARD: We're not anywhere near it now.

LARRY O'SULLIVAN: That's right.

JAY LEONARD: But I think the point is that because this project is a large number of units, it may very well trigger that ordinance because...

LARRY O'SULLIVAN: Mm-hmm.

JAY LEONARD: ...in the past, you've only had 20 permits.

LARRY O'SULLIVAN: Good.

JAY LEONARD: You know, just one building here is gonna be more than you had last year. Even though there may be no students.

LARRY O'SULLIVAN: Mm-hmm.

JAY LEONARD: So, all of those questions we can address with the Planning Board, but you can see how difficult those particular ordinances are with respect to a project such as this. It just doesn't make sense to...because it'll stop the project. Yeah.

NEIL DUNN: Jim, if I may? Reviewing the workforce housing guidelines and the manual and all that and the RMA, it turns out we happen to be in the highest median income RMA in the state, and so therefore, \$325,000 home is considered workforce housing, on which I just did a quick search yesterday on multiple listings for Londonderry, there's a 111. And then if you look at the rent of \$1,360, which is the threshold, there were over 30 of them, and that was just a quick, and there's a lot more of them around, I know, than that. So getting back to why we should give you all these variances or whatever to make it worthwhile to you, I guess I'm not

788 sure about the need and if we need to support such a large project when it appears there might be adequate  
789 workforce housing and rentals already. And I really don't see that addressed other than a...in one of these  
790 reports there was something about there were 12 units or something back in...there were maybe, what, 18  
791 listings that were possible back in 2010 or something, but...So I'm looking at today and today's numbers and a  
792 quick, real quick search because I didn't...there's a 111 houses that qualify and plenty of rental apartments, so  
793 I'm trying to get a handle, if we don't really need the workforce housing, why should we give you all this relief  
794 to make a project that maybe isn't needed at this point in time.  
795

796 LARRY O'SULLIVAN: 'Cause it isn't just the town that needs it, that's the problem. It's the region and...  
797

798 NEIL DUNN: Right, and the region, and I just stayed in Londonderry. I'm sure if I went to Derry to Atkinson  
799 and some of these other towns that are in our RMA, that we'd find our RMA region...I don't know. So I'm still  
800 having trouble saying do we need more of it as a region?  
801

802 LARRY O'SULLIVAN: I think we're...  
803

804 JAY LEONARD: May I...?  
805

806 LARRY O'SULLIVAN: as a...I think our town is already committed to it.  
807

808 JAY LEONARD: May I respond? So, there's a couple of difficulties in that analysis. First off, affordable rental  
809 units are \$1,100 and then you can add utilities to that. The \$1,300 is with utilities but...  
810

811 NEIL DUNN: Yes. Correct.  
812

813 JAY LEONARD: ...Federal rules and State rules, which adopt the Federal rules, don't allow you to include  
814 utilities. So the end result is it has to be affordable at \$1,100.  
815

816 NEIL DUNN: I'm sorry, one more time on that, please, before...  
817

818 JAY LEONARD: Well, the number. You gotta compare apples with apples.  
819

820 NEIL DUNN: Right.  
821

822 JAY LEONARD: And the rent price that we should we talking about is \$1,100 because you rent and then you  
823 add utilities to the rent. And that's the number that it is. Eleven hundred plus utilities.  
824

825 NEIL DUNN: But you can...so if you find a rental apartment that includes utilities, you can't use that number to  
826 meet the 13?  
827

828 JAY LEONARD: Oh, you can.  
829

830 NEIL DUNN: Oh, okay.  
831

832 JAY LEONARD: But this particular proposal is rent plus utilities.

833  
834 NEIL DUNN: Right...

835  
836 JAY LEONARD: And the State and the Federal government say you have to subtract whatever that number is.  
837 There is a...they have a very specific formula on how you determine what's an affordable rent. And that  
838 number therefore is \$1,100 a month plus utilities. That's what they tally. Now...but the underlying question is  
839 do we need affordable housing? And the most direct answer to you is that your Town said you did. They told  
840 you you had to interpret these ordinances to provide affordable housing and they told you you have to  
841 interpret them to provide affordable rental housing. Your question...it's isn't...it's...I understand where you're  
842 coming from and you're thinking that there are opportunities out there for people to rent, but both the State  
843 and the Town of Londonderry have decided there are not enough opportunities.

844  
845 NEIL DUNN: Well...Oh, I'm sorry, go ahead.

846  
847 JAY LEONARD: But don't forget, we're also talking about present and ongoing needs. So what the Town has  
848 decided is that they want to encourage developments that will provide affordable housing and that's what  
849 we're talking about. Encouraging a development that will provide affordable rental housing. Now, as we  
850 talked the last time, rental housing is more difficult because the test is you look at the median income for a  
851 three person family...three person household, you take 60% of that number and then you can only use 30% of  
852 that number...

853  
854 NEIL DUNN: Right, and that's why they give us the guidelines...

855  
856 JAY LEONARD: Yeah.

857  
858 NEIL DUNN: ...so I don't think we need to go all through that. That's why they give us that section in the  
859 working guide.

860  
861 JAY LEONARD: Yes.

862  
863 NEIL DUNN: And I guess I'm...

864  
865 JAY LEONARD: There are not enough units. I mean, that's a finding at the State level, it's a finding at the local  
866 level. And it is a regional need. You know, it's a fact. It's a determined need.

867  
868 NEIL DUNN: I guess...I know we did a study and, but I'm looking at the guideline that you pointed us to that  
869 said here are the thresholds and we're in the richest median income in the area in the State and here are the  
870 thresholds for housing and rental, and to me it appears to be enough. And granted, the market has changed,  
871 the economy's gotten softer, and if it picks up, maybe the prices will go up. My understandings in rentals  
872 [indistinct] their price or the property values have come down. Maybe the housing market, if prices go up,  
873 there will be less availability just here in Londonderry, not to speak of the whole region. But the rentals... the  
874 workforce study that we had said yeah, we need to look at that. The zoning ordinance we put in was, yes, to  
875 look at that. But I'm still not convinced of the need and that we should give you all these variances. If there

876 was thing huge overwhelming thing, if I looked and there was nothing available, then to me, personally, I'd say  
877 yeah. But we don't have a magic number or magic quantity of units, either in residential ownership or in  
878 rental, so when I look at that, I'm saying why do we need to give you all this?  
879

880 JAY LEONARD: Well, I appreciate...  
881

882 NEIL DUNN: In order to make it viable and to make it...make the point.  
883

884 JIM SMITH: Here's how I would tend to look at it. What you're looking at is a snapshot at the present  
885 moment. This ordinance is designed to look at the big picture over a long timeframe and that's what the  
886 ordinances are trying to address. So if you're just trying to look at what's happening right today, it isn't a fair  
887 comparison to the overall picture. And that's what this ordinance is doing. It's trying to look at the big picture  
888 and decide...both the State and the Town have both decided there is a need because they've both passed  
889 either a law or an ordinance to address that.  
890

891 NEIL DUNN: And it gets back to the whole point of why, then, if this ordinance is so clear and new and defined  
892 in it, why we're looking for such variances to the three major points of the whole program, is my point. I  
893 understand what you're saying. It's looking forward and that's why I'm thinking we need to look at the spirit  
894 of the ordinance, the [indistinct] now and in the future, but we don't give away everything because  
895 supposedly, we're looking 30 years out when in 30 or 40 years, this won't even have to be workforce housing.  
896 So I'm...  
897

898 JIM SMITH: Well, there may be even more of a need 30, 40...  
899

900 NEIL DUNN: There might be, but this won't be in it anymore, this won't have to be in it. The time period will  
901 have expired and this won't be workforce housing after 40 years. Or it doesn't have...you only have to  
902 maintain it, right?  
903

904 JAY LEONARD: Forty years.  
905

906 NEIL DUNN: For 40 years.  
907

908 TOM MONAHAN: Forty years.  
909

910 NEIL DUNN: So you have that window, anyway. We're not looking indefinitely out.  
911

912 JIM SMITH: Well, again, there is a 40 year window.  
913

914 NEIL DUNN: Yeah, no, I understand.  
915

916 JIM SMITH: We're not looking one year or two years.  
917

918 NEIL DUNN: Correct.  
919

920 JIM SMITH: Okay. The other point...one of the other aspects that I get out of this whole argument is you...we  
921 cannot erect barriers which makes it economically unworkable to create this type of housing.

922  
923 NEIL DUNN: Mm-hmm.

924  
925 JIM SMITH: From what I've....I haven't read all of this. It's just too much. It's just too much to read. But one  
926 of the things that comes out of this, if you look at Tim Thompson, he wrote a memo in there which cautioned  
927 both the Planning Board and Town Council to go to 16 was not what he would recommend. I'm paraphrasing  
928 what he said.

929  
930 LARRY O'SULLIVAN: Something along the lines that he said was 'allow the opportunity to increase it.'

931  
932 JIM SMITH: Right.

933  
934 LARRY O'SULLIVAN: But that's not what the Planning Board...

935  
936 JIM SMITH: One of the other things I have, I'd like to ask a question is how would you design with a building  
937 with 20 units?

938  
939 JAY LEONARD: Well, I don't know. I can tell you that it's difficult. I, of course, am not an architect, but I  
940 understand that the number of units within a building, for an architect or an engineer, you gotta be careful.  
941 Twenty's don't work. Twenty four's do because of the open space, the common space, it's a reasonable  
942 number. It depends on the...all of that common space, whether it's hallways or elevators or whatever it might  
943 be, stairways, makes it different and you gotta somehow or other develop a scheme that is efficient because  
944 as soon as you start to lose efficiency, that's when the cost goes up. So a 20 does not work. I can say that.

945  
946 JIM SMITH: Okay. Maybe the builder could answer this question. Do you know off the top of your head  
947 whether a two story building would require an elevator versus a three story building?

948  
949 JAY LEONARD: I don't think either of them require an elevator, but Karl, you did an...can you answer the...?

950  
951 KARL DUBAY: Is this on? Hi, my name is Karl Dubay. We work for the architects on this. And, Mr. Chair, you  
952 have a great point. When you start looking at the plates and the number of apartments and on these  
953 buildings, we're doing, I believe, seven one-bedroom and the remaining two-bedroom. There are no three-  
954 bedrooms in here at all. And that also goes to the point of the expected children in these where a good  
955 percentage of these are one-bedroom units. But when you look at the floor plates, and these are proposed at  
956 three stories, they have to be slab on grade because of the efficiencies of construction. We can't get into  
957 interior foundation, you know, retaining walls or anything like that. So if we do just a basic building block like  
958 my kid would play with Legos on a plate and you're at three stories. We could four. Your own ordinance  
959 allows us to go four stories, but that gets into a whole other cost issue when you've got four stories. We're  
960 proposing three here for a lot of reasons that we described earlier. So we're looking at three floor plates.  
961 Twenty four divided by three is eight. Eight on both sides of the building with a center hallway configuration is  
962 four. So those plates really work well at 24. When you picture playing with the Legos and the plates and we  
963 have to go to 20, there's the equivalent space of about four units there and that's a lot of square footage that

964 you can't...we can't do any funky stuff with the roofline. We have about a four unit equivalent in there that's a  
965 wasted space that we can't make it up and then the square foot cost really start going up. And we could have  
966 done that analysis, we could have showed you those spreadsheets but it's innately silly. And that's probably  
967 why you don't see very many 20 unit apartment buildings and we were looking at the ordinance, we were  
968 trying to figure out why...how the heck can you get a 20 unit apartment building at three stories? Well, you  
969 could four and make it look very weird, you know, European style of some sort, but that would be crazy  
970 money at that point. So we looked at the plates, we looked at 24 units and the same goes to a 16 unit building  
971 when you're dealing with a tremendous amount of site work. The same amount of foundation work, the same  
972 amount of slabs, the same amount of infrastructure, but it's spread out over an immense amount of area.  
973 And that even goes to the ordinance on open space requirements for the inclusionary housing ordinance.  
974 Which we meet, by the way. We meet all the open space criteria. We're down on the density. We have all  
975 the open space along the front of the property that people asked for. We're saving all the trees, we've saving  
976 the farm. So that helps make this project, we believe, palatable with a three story building. The floor plates is  
977 an absolute critical component of this and that goes right to the 24 units. And when you start dealing with 20  
978 units and 16, you might think, "Oh, geez, that's only four units? Why are we arguing over four units?" But it's  
979 a big, big difference. And in this case, we're almost penalized because we have a good site and this  
980 gentleman, Jay, you brought it up and the Chair brought it up. You were getting there. We're penalized  
981 because we have a good site because we can't take credit for those conditional use criteria, that if we had  
982 crappy soils and a lot of wetlands and a lot of steep slopes, then they would allow us, maybe, to go to 16 to  
983 20. We have a good site here, we're providing rental, which is a whole different pro forma, and these floor  
984 plates make a huge difference and the 24 is a very efficient number for an apartment building complex like  
985 this.

986  
987 JIM SMITH: Anybody else got questions from the Board? Do you have anything else you would like to present  
988 at this point?

989  
990 JAY LEONARD: I don't think so. If a question comes up later, we're certainly happy to answer.

991  
992 LARRY O'SULLIVAN: Would you recommend or would you volunteer any restrictions on how any approvals  
993 would be restricted? For example, that, to answer my question about the economic viability of it, or if you  
994 want the profitability of it, that we put a restriction that it be proven that a 24 is required?

995  
996 JAY LEONARD: Yeah, I think we have done that, so...I think...

997  
998 LARRY O'SULLIVAN: Well, the Planning Board...Did the Planning Board go out and get a neutral party to do the  
999 evaluation and so forth...?

000  
001 JAY LEONARD: I think we would be willing to talk with the Planning Board about that. We know...

002  
003 LARRY O'SULLIVAN: You can prove it again.

004  
005 JAY LEONARD: We know we have to deal with the Planning Board and we know we can answer their  
006 questions. We're very confident that we think this is what they want. Now, of course, we're trying to guess,  
007 but...

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LARRY O'SULLIVAN: No, but none of the Planning Board members are here.

JAY LEONARD: No. No, I know, and, you know, just the nature of the process, here, we gotta deal with each Board and that's just part of what we have to do, but...So I think, you know, I think so long as it's reasonable, we're willing to certainly talk to them about that and demonstrate why this is such an important thing.

LARRY O'SULLIVAN: That's what I would want. I'd want it be demonstrated.

JAY LEONARD: Yeah.

LARRY O'SULLIVAN: By them.

JAY LEONARD: Yeah, that's fine.

LARRY O'SULLIVAN: The way they normally do their reviews...

JAY LEONARD: Absolutely, yeah. That's fine.

LARRY O'SULLIVAN: Because they do cost reviews.

JAY LEONARD: Yup.

JIM SMITH: But I know at the previous meeting, I asked if you would be willing to put a square foot footprint restriction.

JAY LEONARD: Yes. Yeah, and that we do. I think right now, we're looking at about a 9,400 square foot. I guess I'd ask that it be not real, real right. Maybe under 10,000. Or something along those lines. And to put that in context, that's approximately the same size footprint as what is at Vista Ridge, but substantially smaller than the hotel. The hotel is about 15,000, so, you know, I think it gives us a little flexibility. We're actually trying to minimize that footprint because, of course, that's efficiency. So our incentive is to do that, just so you know. But we're willing to work with a footprint limit.

LARRY O'SULLIVAN: Our CIP, just to interrupt for a second, our Capital Improvement Program is impacted by our growth ordinance, alright? And the way our...we have requested that to be built right in and that is something that is fairly well tied together. Have you had any discussions with the Planning Board on the way that they work together and what your expectations are for an additional 240 units at that location?

JAY LEONARD: No, we haven't had any discussions...

LARRY O'SULLIVAN: Traffic? Have you discussed traffic?

JAY LEONARD: Well, we do know that the traffic, and I'm glad you bring that up, because I forgot to mention it, we have done preliminary traffic studies. We know that somewhere between 75 and 80% of the traffic



052 associated with this site will be going directly to the highway or basically going out and taking a right. So the  
053 impact on the longer portion of Perkins Road is minor in that regard. But we also know that we will have to  
054 demonstrate to the Planning Board that we handle traffic appropriately.  
055

056 LARRY O'SULLIVAN: Right.  
057

058 JAY LEONARD: I think I mentioned the last time one of the things we have investigated is a "T" intersection.  
059 So we are...we expect to do that.  
060

061 LARRY O'SULLIVAN: Your expectations are then...yeah. Right.  
062

063 JAY LEONARD: We expect to work with the Planning Board on traffic issues. We expect to mitigate our  
064 impacts and, you know, that's just a requirement of the process.  
065

066 JIM SMITH: Anything else?  
067

068 LARRY O'SULLIVAN: Yeah, we have to, in my opinion, the...  
069

070 JIM SMITH: Well, we haven't got into deliberations, so...  
071

072 LARRY O'SULLIVAN: Well, the questions...  
073

074 JIM SMITH: Yeah.  
075

076 LARRY O'SULLIVAN: Once we start deliberations, we can't hear anything from the applicant.  
077

078 JIM SMITH: I know, but we can...  
079

080 LARRY O'SULLIVAN: So that's why I'm bringing this up now. 'Cause I need to address it. 'Cause I don't see  
081 how it was addressed. The way our Growth Management Ordinance operates is it gets triggered at a certain  
082 point. It's measured and what the application for the variance is doing is saying "Ignore it just for this  
083 project." The problem that I have with it is that it's more than just North School. It's the firefighters and the  
084 police and all the rest of that per capita person that we try to plan for. One of things that I've been  
085 tangentially involved in is the Master Plan that's undergoing being written as we speak, being put together as  
086 we speak. For all you folks out there who haven't had your input yet, this is the time for input because the  
087 Master Plan is what's driving this whole thing. The Master Plan has said we need affordable housing, we need  
088 workforce housing. These are the ways that we tried to implement it through the ordinances and this is all  
089 master planning that starts this whole thing going here. And now the State has impacted this and put an  
090 overlay, or put this umbrella that we had, like we had for the cell phone, it's another angle that somebody  
091 who's not paying for any of this stuff in any way, shape, manner, or form is trying to force it on us and our  
092 legislature did it to us with this. So thank them the next time you see them. But if it was complete, if they had  
093 done...our legislature had done what I suspect they're just also learning about what we have to go through  
094 here. This economic analysis stuff and put all the items in a row that we have to concern ourselves with along  
095 with the people who are doing the presentation. We know you're not gonna do it if you can't make any

096 money at it. It only makes sense. But at the same time, I don't know what would be the...you know, the  
097 information that you've provided me doesn't give me the information that I need to, I feel I need, to make a  
098 justified decision. So I need more information. You know, that's something I don't know if I can ever get, but I  
099 would like the opinion of a third party.

100  
101 JAY LEONARD: Well, I should also say, and in the process before the Planning Board, we're required to go  
102 through this whole economic thing. It's part of the conditional use permit. So it definitely happens.

103  
104 LARRY O'SULLIVAN: So therefore, if a restriction was placed on your requests, or the approval of your  
105 requests of the variance, to, you know, have this go past the Planning Board as well for the determination of  
106 how it will be affected over the three years versus the five years, okay? I don't mean to dump it on the  
107 Planning Board, but we don't have the resources here to determine what that would be in any one of those  
108 years. 'Cause I don't have any idea how many sixth graders are gonna move into your project or the projects  
109 that are being built at Woodmont or any other place. So...that would be using those...that area's resources.  
110 Fire, thank goodness you have a new fire station up there.

111  
112 JAY LEONARD: Well, we do have a report from Mark Fougere that this project does not tax the present  
113 infrastructure and it goes through the sewer, you know, we're compliant with all the...

114  
115 LARRY O'SULLIVAN: I don't disagree with you, Jay. The issue is...

116  
117 JAY LEONARD: But I...

118  
119 LARRY O'SULLIVAN: ...incrementally...

120  
121 JAY LEONARD: Yup. Yup.

122  
123 LARRY O'SULLIVAN: ...this is another project on...They're more familiar with all the different projects that are  
124 going on.

125  
126 JAY LEONARD: The Planning Board.

127  
128 LARRY O'SULLIVAN: We only see the ones here, and hear about the ones that are in the newspaper. So...

129  
130 JAY LEONARD: But we do have to present all this information to the Planning Board. That's part of the  
131 conditional use permit.

132  
133 NEIL DUNN: If I may, Mr. Chairman? You also get...don't you get some kind of points for either workforce  
134 housing or being a project already under development? Is...kind of like in the ratings system for who gets  
135 permits in a growth restriction?

136  
137 JAY LEONARD: Yeah. Yeah, the problem with that is that the growth ordinance is not geared toward multi-  
138 family rental projects. And it's geared toward one permit at a time as I read it, and I certainly am not an  
139 expert in your growth ordinance but it's not set up to accommodate buildings that are 16 or 24 units per

140 building and the point system doesn't get you points for, you know, 240 units. It gets you points for one unit, I  
141 believe. But it's the overall impact of that on a project like this that is the problem. You know, so it's not  
142 gonna be a problem on all workforce housing because some workforce housing is not multi-family rental. It's  
143 just...

144  
145 NEIL DUNN: And not 240 units where phasing is crucial. Yeah.

146  
147 JAY LEONARD: Well now, there's two kinds of phasing and I don't want to, you know, we're not talking...we  
148 will have to construct this in an orderly fashion on site and that will be part of what the Planning Board  
149 requires and, you know, I mean that may be obvious but just let me put it on the record. The Planning Board  
150 is gonna say "Hey you can't occupy these units over here until all of the infrastructure for those units is  
151 accomplished." That's...we're not talking about that. We agree and we know. We're talking more about  
152 growth restrictions which is a little different.

153  
154 JIM SMITH: Okay. We're gonna take a short break for...to relieve ourselves, I guess. We've been sitting here  
155 long enough. So we'll reconvene at...we'll hold it to say, ten minutes of the hour so we don't prolong this  
156 thing.

157  
158 [The Board took a break at approximately 8:38 PM and reconvened at approximately 8:50 PM].

159  
160 JIM SMITH: Do you anything else further?

161  
162 JAY LEONARD: I just wanna clarify two or three...two things. As to conditions, the question was would we  
163 accept some conditions? We talked about a couple. One that I almost overlooked; we agreed to limit these  
164 buildings to three stories. I've said that, but I wanna make sure that's clear. So the footprint and the stories,  
165 we're fine.

166  
167 JIM SMITH: Okay.

168  
169 JAY LEONARD: As regards to the North School, I did look through Mark Fougere's report and you'll see in there  
170 that...I understand North School is part of the elementary school [indistinct].

171  
172 JIM SMITH: Right.

173  
174 JAY LEONARD: And right now, over the last five years, kindergarten has...the kindergarten population has  
175 been reduced by 25%. So there's 25% fewer people in kindergarten than there were five years ago and there's  
176 almost 18% fewer people in elementary school, so the capacity is there. We will present information to the  
177 Planning Board on actual school children per grade, et cetera. But we're nowhere near...I mean, I understand  
178 we're taking a very incremental part, but it's a...it may be...it's a very small incremental part and there is  
179 nothing to suggest that in the near future, our development, even together with others in the near future, will  
180 cause any problem. And then the only other thing I'd like to say with regard to Tim Thompson's report, I think  
181 you make a good point and I'd also like to point out that his comments, he thought that it was especially  
182 problematic in the context of a rental project because the cost was such a dramatic cost change. So, with that,  
183 I'm glad to step aside.

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JIM SMITH: Okay. At this point, I'd open it up to anyone who is speaking in favor?

[No replies].

JIM SMITH: Since we have none, now it would be anyone who either has questions or is in opposition. And please limit your comments to the specific variances which are being asked. You wanna approach one of the mics and identify yourself, Ma'am?

ALICE MCARDLE: Good evening.

NEIL DUNN: Good evening.

ALICE MCARDLE: My name is Alice MCardle. For the past 35 years, I have lived at 55 Perkins Road in Londonderry, New Hampshire and have enjoyed the country rural tranquil life. In response to the Town of Londonderry Zoning Board of Adjustment meeting case number 10/17/2012-2, 3, and 4, I forward my objections with the following reasons: Number one; Density in rural areas is inconsistent with the character of a quiet neighborhood and AR-I zoning. Number two; The dwelling units will generate an increase in traffic and put an inordinate stress on the rural road system in the immediate neighborhood. Number three; This neighborhood density is one unit per acre and accordingly, a consistent density should be no more than nine units or 9.3 acres. Number four; This variance request will drastically change the character of our neighborhood, therefore I am not in favor of P&Z allowing this variance and setting an irrevocable precedence which will open the floodgates to future change of character of this peaceful neighborhood. I urge this Board to deny this request for increasing the density. Thank you.

JIM SMITH: Do you have anything else further?

ALICE MCARDLE: Would you like a copy?

NEIL DUNN: Do you want a copy, Jaye, or no?

JAYE TROTTIER: Sure.

ALICE MCARDLE: Would you like a copy?

JAYE TROTTIER: Sure.

ALICE MCARDLE: No?

JAYE TROTTIER: Sure.

JIM SMITH: Okay. Anyone else?

227 BRIAN MICCICHE: Good evening. My name is Brian Micciche. I live at 9 Perkins Road. I don't oppose  
228 workforce housing, either. I think everybody in the State needs a hand, needs help, and I'm glad someone's  
229 there to help them. And if you looked at the spine center and you looked at the mall that was built, you did a  
230 great job, I feel. So I think that's nice. However, the town that I moved to has rules. I grew up with rules and I  
231 don't think the rules should be bent for anybody. I have to live by rules. I'm a disabled veteran. I don't get  
232 the big tax break because that's the way it is. I'm not stamping my feet down the hall saying I deserve this or I  
233 rate this because I'm this. I'm a person like everybody else and if someone wants to follow the rules when  
234 they come to our town, good luck to you. If what they wanna do doesn't fit in with our town and they can find  
235 somewhere else to do it, good luck to you. But we have rules. And you guys are our leadership. And you  
236 need to set the example for our community, not just now, not just 40 years from now when this expires, but  
237 for 100 years from now. And that's what I have to say. I oppose any of the variances that he wants for this.  
238 For his project. Thank you.

239  
240 JIM SMITH: Anyone else?  
241

242 JILL MOSSE: My name is Jill Mosse. I live at 60 Bartley Hill, which turns out onto Perkins Road and I can tell  
243 you, there are times when it really can be difficult to turn out on Perkins Road, just in the normal course.  
244 Usually if you're going first thing in the morning, sometimes you have a lot of traffic. You're gonna add at least  
245 240 cars onto Perkins Road. They're not all turning onto the highway. They're also going to be coming down  
246 and using services in town, so they're gonna be using that whole road. And you talk about the fact is that  
247 you're gonna leave the trees on Perkins Road until they decide that, you know what? There's too many cars  
248 on Perkins Road, we have to widen it and we have to take the trees down. See, I think you have a real safety  
249 issue by putting in that many houses in that area. Or that many apartments in that area. And it's...I oppose it.  
250

251 HEATHER ANDERSON: Hi. Heather Anderson, 31 Perkins Road. And I put together a couple of charts [See  
252 Exhibit "O"]. I'll try and be brief. They all address my concerns and concerns of my neighbors over the  
253 proposed request for the Zoning Board to make these decisions. You both, or a couple of you, have also  
254 expressed concerns over the fact that the Planning Board hasn't been involved in any of the decision making.  
255 You've heard a lot of one sided information. We've gotten a lot of numbers. There's been no validation. This  
256 team has not spoken with our Planning Board who has worked closely with the residents of Perkins Road since  
257 September of 2007 regarding any said development on this parcel of property. So specifically, I'll talk first  
258 around suitability of the Perkins Road location. So this is the location behind you as we have photographed it  
259 today. Want to advance? We're proposing putting three story, four story potentially, because once we  
260 approve the size of the residence, the Zoning Board, you know, what's to prevent this people developing the  
261 property, and this is, by the way, a photo of their other property in Bedford, from putting a similar property  
262 here on Perkins Road? So we're talking changing dramatically the landscape of Perkins Road. Again, another  
263 photo of it. Talking putting in some pretty big apartment blocks, not to mention other concerns we'll address  
264 later. Changing dramatically the landscape of the road. And this is just two out of proposed six properties  
265 that they're gonna put on the locations. So I just also...there's been a lot skewing in the way I feel that the  
266 zoning has been presented. The top photo represents that photo that they showed yesterday of the Sleep Inn  
267 in the same location. The bottom photo is a photo we took from the street using just a regular camera. You  
268 can see the Sleep Inn is not a very big property. They're proposing putting approximately another six Sleep  
269 Inns behind the Sleep Inn. So that's a huge change, again, to the character of Perkins Road. Another photo,  
270 another photo. We do have some text in here as well. Now, this is a picture of Vista Ridge across the way.

271 You can see the character of Vista Ridge is quite nice. We don't mind the way it looks. It is a larger property.  
272 But it's not, you know, unless we go and get a presentation from these guys that we can use in the  
273 consideration of what they're trying to put here, I propose why are we proposing any exception to zoning  
274 when we don't know what the property even is proposed to look like? And that's where the Planning Board is  
275 very important and that's where the residents have been working, as I said, for five years, with the Town of  
276 Londonderry on developing this property and everybody agrees development is inevitable but let's not  
277 bull...let's not bulldoze it and come in say "Just grant us exception and then we're tell you what we're gonna  
278 do and show you what we're gonna do visually." You know, it's interesting, 'cause these guys keep talking  
279 about this being a perfect parcel of land and in 2007, when the previous developer, Elmer A. Pease, was trying  
280 to develop the exact same parcel, he quoted "Certainly not considered by any standard a residential section."  
281 So we're being told it's a perfect residential section by their experts. The experts back when they were trying  
282 to put a mall at the end of the street we're saying, "Oh my God, don't put any residential housing there," so I  
283 question without an independent third party advising whether, in fact, we have an unbiased opinion as to  
284 what's ideal for this parcel of property. You can move ahead.

285  
286 PHIL CLEOBURY: I just wanted people to focus on the fact...

287  
288 HEATHER ANDERSON: Okay. That's...okay, that's good.

289  
290 PHIL CLEOBURY: ...commercial use.

291  
292 HEATHER ANDERSON: Now, we talked about the wetland, and this is again from Elmer A. Pease 2007  
293 development plan, you can see that area in the middle is all wetlands, so it's not just a tiny piece of the parcel.  
294 It's a pretty sizable piece of the parcel that's wetland and again, unless we go to the Planning Board and get an  
295 independent, you know, surveyor, or somebody to actually validate how much of it is wetland, I can't go with  
296 somebody just saying "Well it's just a little piece of the parcel." It's quite a substantial piece of the parcel that  
297 we understand to be wetland based on the meetings we had back in 2007. We talked a bit to the cost of the  
298 town in residents and again, nobody's opposed to workforce housing. At the end here, we'll talk about a  
299 couple of other parcels where the Planning Board, and I'm bringing in some Planning Board information as  
300 proposed were good locations for workforce housing, but, again, why we think this particular location is bad is  
301 for the following reasons: We would need upgrades to the roads. It's very residential in nature. There's no  
302 main sewer down the rest of Perkins Road. Are you gonna force main sewer down the rest of the road for the  
303 other residents as you expand the road? That's a consideration as well. There's the policing we talked about  
304 already. Fire we've talked about already. Education costs for the kids, particularly if we do reach a maximum  
305 on the school in Londonderry. Are we gonna have to build another school? A huge amount of concerns over  
306 traffic control. We've got some photos at the back of this property of what it looks like today, the traffic.  
307 Having an additional 240 houses potentially turning right at any given time will just only exacerbate the traffic  
308 consideration at the end of the road. I'm trying to go through this quickly. Another concern is Perkins already,  
309 to Route 28, there's an easterly route run to Derry for people going to Walmart. There's actually a lot of  
310 people going that way to drive to Market Basket in Derry. They don't wanna take the highway because they  
311 have to get on the ramp, get off the ramp, so they'll actually take Perkins Road already to go into Derry to  
312 have their services. So saying that everybody's gonna automatically go on the highway to go to work or to go  
313 onto 93 is not true. There's gonna be an equal percentage of people going into Derry, into Londonderry to  
314 shop and using Perkins Road. That's caused additional concerns around speeding. There's already a danger.

315 A lot of people don't wanna have their kids waiting for the bus on Perkins Road. I know my neighbors have  
316 young children. They're very concerned about not being there watching them while they're waiting for the  
317 bus because of the speed of the cars already and the amount of cars already.

318  
319 Any questions?

320  
321 HEATHER ANDERSON: So...so there's a number of other concerns around the traffic load. There's Vista Ridge,  
322 there's the Sleep Inn. There's cars on Perkins Road and Danbury Court and Bartley Hill already. You're talking  
323 about adding Wallace Farms, I...you know, we've already got 4,000 cars in the local area, plus you're gonna  
324 add an additional 240 cars. And there's one access point. There's no traffic light at the end of Perkins Road.  
325 You've already got a traffic light at the exit to Vista Ridge. I don't think that they can even add an additional  
326 traffic light, talking with the State. So we would be forced to just deal with the stop sign that's already there.

327  
328 PHIL CLEOBURY: Phil Cleobury, 31 Perkins Road. Just as...I can comment. I think it's already been mentioned  
329 as well today is the fact that Woodmont Orchards is also gonna add a certain degree of traffic load to this  
330 particular route in and out of town as well.

331  
332 HEATHER ANDERSON: This is the traffic as of three o'clock, a weekday in September, and this is actually, the  
333 top picture's pretty light. The bottom picture is more typical of what you'll see or even worse coming out of  
334 Perkins Road in the morning. That's the stop sign you see right in front of the Shell sign. And turning right  
335 there to get onto the highway is almost virtually impossible unless you have a kind person willing to let you in  
336 into the line. And this is without any additional building, obviously. Any additional construction.

337  
338 PHIL CLEOBURY: I put these photographs together just to give an indication for those that don't actually  
339 Perkins Road onto the 28 and the 93. Just to give a feel as to exactly how bad the traffic can be down there  
340 and obviously, as you can see, I didn't do it at a peak time. This is 3:30, 3:00 to 3:30. I think Coca Cola and  
341 several of the other big businesses that are up on the opposite of the 28 let out at about 4:00. And just to  
342 extend what my wife said earlier is that actually takes anything from half an hour to three quarters of an hour  
343 to go from one side of the 93 at the exit 5 to the other side at this point in time. Half an hour to three  
344 quarters of an hour.

345  
346 HEATHER ANDERSON: During rush hour, yeah. Again, we won't go through all of these charts at the back. I'm  
347 just gonna make some summary comments. We had a zoning and master plan. We spent years, we the  
348 residents, putting together with the Planning Board. I have a petition which is on file with the Town of  
349 Londonderry from over 100 residents of Londonderry and the local area saying exactly our concerns over what  
350 I've discussed with you here. The Planning Board has the history. Our neighbor who's on the Planning Board  
351 unfortunately couldn't be here tonight. He probably would have spoken as well and recused himself from the  
352 Planning Board but we've been here and we've fought this. We understand that workforce housing has to  
353 come. We're not arguing workforce housing. We're arguing the location of this workforce housing in  
354 particular. We're also arguing the means by which the developer is trying to get this pushed through because  
355 obviously, one win here, having the Zoning Board give him all these exceptions is like, you know, one little  
356 chink in the armor of developing this parcel of land. We really need to look at is the best parcel of land to  
357 develop? Do we really need 240 units? It sounds to me already that 240 units...Yes, they're saying that they  
358 need to have a 50% occupancy as low cost and 50% as just regular rental. I'm questioning whether they

359 actually can fill 240 units. Maybe a need a smaller development. Nobody's saying we don't need  
360 development. Just...we need to really question the size of the development we need in southern Rockingham  
361 County.

362 PHIL CLEOBURY: I think the other issue as well is looking at the previous Master Plans, is that back in 2004, as  
363 you can see by the town...

364  
365 JIM SMITH: I'm gonna stop you at that point.

366  
367 HEATHER ANDERSON: Yup. Yup.

368  
369 JIM SMITH: We're not debating the density. The zoning...

370  
371 HEATHER ANDERSON: Right.

372  
373 JIM SMITH: ...it fits that.

374  
375 HEATHER ANDERSON: Right. Right.

376  
377 JIM SMITH: So when you bring up all these...

378  
379 HEATHER ANDERSON: We're questioning the parcel.

380  
381 JIM SMITH: A lot of these traffic issues and everything else are really Planning Board issues.

382  
383 HEATHER ANDERSON: Right, exactly.

384  
385 JIM SMITH: They're not up to us.

386  
387 HEATHER ANDERSON: Right.

388  
389 JIM SMITH: So what we're looking at is strictly the variances.

390  
391 HEATHER ANDERSON: Okay. That's fair, but we're questioning...

392  
393 JIM SMITH: So please address those.

394  
395 HEATHER ANDERSON: We're questioning how can you decide as a Zoning Board to grant hardship on this  
396 developer when we just have their side of the story? We don't have any of the information that's previously  
397 been determined around feasibility and why we even arrived at the 16 units in the first place. I know that  
398 there is a unit just approved last month that's in the Londonderry Times, I think, for a 20 unit....there was a 20  
399 unit complex that was approved by the Zoning Board. So they have approved 20 unit buildings. They are  
400 possible to be built. Maybe you don't have 11 or 15 one-bedroom apartments and five two-bedroom  
401 apartments. Maybe you have to have 13, you know, I'm sorry, nine one-bedroom apartments and four...my  
402 numbers aren't adding up, but maybe you can decrease the number of one-bedrooms and you increase the



403 number of two-bedrooms and that's how you fill the same amount of space with 20 units as opposed to 24.  
404 Who's really saying that it's not affordable? We have a very one sided opinion. We have nobody  
405 corroborating the numbers and I really don't...I think we're putting the cart before the horse. If these guys  
406 really want to develop it, if they're convinced of their case and they go to the Planning Board and the Planning  
407 Board says, you know, based on their independent research that it is feasible, and these guys want to take us  
408 to court and they've threatened already to take us to court, which really put my back up at the last meeting  
409 we were at. Let them take us to court and prove hardship. I mean, we're not saying that we don't want  
410 anybody to develop. We're not...to develop low cost housing, we're not refusing the low cost housing. We're  
411 not saying that it's not gonna happen in Londonderry. There's actually a couple of parcels here where multi-  
412 family residential has actually been recommended. Those are the areas highlighted in yellow. So there's good  
413 places where you can put it. And one last item that the developer talked about...

414  
415 PHIL CLEOBURY: Well, I just...

416  
417 HEATHER ANDERSON: ...was how beautiful their parcel was in Bedford that they developed. We looked at it.  
418 It's in the middle of an industrial zone. There's no houses around it. It's on the river. It doesn't affect traffic.  
419 If it had proposed at Joppa Hill, the size of a property that they're proposing here on Perkins Road, I'm sure it  
420 would have been overturned. So to say that they've managed to get approvals elsewhere, the conditions and  
421 the circumstances there as to why that was approved were very different and the circumstances on this  
422 particular parcel of land.

423  
424 PHIL CLEOBURY: So, if I can just add to that is that it was Bedford that was commented on at the previous  
425 meeting and we did a quick evaluation of the workforce housing that had been put together in Bedford and  
426 they had specifically identified a performance zone to put workforce housing in. The evaluation is is that there  
427 are...there were no residential properties around that area at all. There were purely and simply commercial  
428 zoning in that particular region.

429  
430 JIM SMITH: I...

431  
432 HEATHER ANDERSON: So this parcel...

433  
434 JIM SMITH: I think we're getting off the point.

435  
436 HEATHER ANDERSON: I'm just saying we really need to...

437  
438 JIM SMITH: I mean, okay. Excuse me.

439  
440 HEATHER ANDERSON: We, as residents of Perkins Road...

441  
442 JIM SMITH: Could you just hold it for a second?

443  
444 HEATHER ANDERSON: ...ask you to consider additional third party information before you make any decision  
445 on granting an exception regarding hardship for them 'cause I think the hardship to the residents of Perkins  
446 Road is far greater than the hardship to them to have to reduce the size of the property that they're building.

447 And on this location of land. We're saying yes, it makes them a lot of money on this parcel of land, but does  
448 this parcel of land make sense?  
449  
450 JIM SMITH: Okay. Are you complete? Are you done?  
451  
452 PHIL CLEOBURY: Do you have any questions at all?  
453  
454 JIM SMITH: Does anyone on the Board have any questions? Okay.  
455  
456 JAYE TROTTIER: Can I just get your name again>  
457  
458 PHIL CLEOBURY: Yes, it's Phil Cleobury.  
459  
460 JAYE TROTTIER: Thank you. And what's your address?  
461  
462 PHIL CLEOBURY: 31 Perkins Road.  
463  
464 JAYE TROTTIER: Thank you.  
465  
466 JAY HOOLEY: Just as a clarification, if memory serves, I was here, we did not approve any 20 unit apartment  
467 building. That was...  
468  
469 LARRY O'SULLIVAN: Twenty...It was 20...  
470  
471 HEATHER ANDERSON: No, it was the Planning Board and it was just in the news. It's the newspaper. We have  
472 [indistinct].  
473  
474 ANN CHIAMPA: It was a...on Mammoth Road, I believe. It's 20 separate units.  
475  
476 JAY HOOLEY: Stand alone homes, which is a completely different issue.  
477  
478 HEATHER ANDERSON: Okay. Sorry. Okay. Alright.  
479  
480 ANN CHIAMPA: It was individual family homes.  
481  
482 HEATHER ANDERSON: Okay. Regardless, we're just questioning whether the Planning Board and an  
483 independent party should be involved in the decision making. 'Cause there's a lot of other considerations up  
484 for five years...  
485  
486 JIM SMITH: We agree with you.  
487  
488 HEATHER ANDERSON: ....[indistinct] arguing. Okay.  
489  
490 JIM SMITH: We're just looking...

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HEATHER ANDERSON: Okay.

JIM SMITH: ...at the variances.

HEATHER ANDERSON: Okay.

JIM SMITH: Okay?

CHRIS PAUL: Hi. Chris Paul, 118 Hardy. I'll try to be brief. I think that, you know, when that workforce housing ordinance was crafted, was it 2010 that we did it? I mean, I think that a lot of residents came out and that the overall feeling was 'try to keep these buildings small.' Now I don't know how that impacts them as far as , you know, how much money they can glean out of the property, but, like the Board said, we don't have enough information to be able to determine that, so I can't see how you guys could grant the request for the three variances just on that fact alone. That's all.

JIM SMITH: Anyone else? Okay, Mr. Brown.

MIKE BROWN: Mr. Chair, thank you very much. Mike Brown, 5 Carousel Court. I came in late, so I apologize. I need to ask if you're taking public input on case one, case two...?

JIM SMITH: We're hearing all of them together.

MIKE BROWN: They're all together?

JIM SMITH: Yes.

MIKE BROWN: Okay.

JIM SMITH: The presentations are all together.

NEIL DUNN: On the 10...

JIM SMITH: We'll decide individually, but...

MIKE BROWN: Okay, but you're taking public comment in aggregate for all three?

JIM SMITH: Right.

MIKE BROWN: Okay. So I'm not as prepared as I should be. So I...I understand that the challenges that this Board is up against in terms of being volunteers and having to follow a very prescribed set of criteria. Having done that, I can relate very much. I also can relate to what some of the abutters are saying. One of the things...and I'm not here to tell you how to do your jobs, that's for sure. But I just wanted to remind the Board and remind the general public in particular that the burden of proof is on the applicant to satisfy all five of the

535 variance criteria. Every single one of them. Not one, two, three, or four, but all five. If, in the estimation of  
536 the Zoning Board, the applicant doesn't satisfy that, you're not to grant the variance. It's pretty straight  
537 forward. If they do satisfy all five, then you should grant the variance. That's the decision you have. That's  
538 what the public needs to hear and know is has the applicant met that standard of proving that the variance is  
539 not contrary to the public interest? And why it is or isn't. Is the variance consistent with the spirit of the  
540 ordinance? And if it is or isn't, why? Et cetera, et cetera. Just speaking in terms of one particular...one of  
541 those five points of law, 'the variance is consistent with the spirit of the ordinance,' if I look at case number  
542 one, the applicant is requesting a variance from residential development phasing and growth management.  
543 So when you look at the spirit and intent of those ordinances, which is our law, which is what you have to  
544 decide on for this one point, it's quite clear. The spirit and intent of residential development phasing is to  
545 guide efforts by the Town to monitor, evaluate, plan form, and guide residential growth in Londonderry that is  
546 consistent with the Town's capacity, ability, for planned, orderly, and sensible expansion of its services to  
547 accommodate such development without establishing absolute limits on overall growth. So there's a  
548 balancing act. But the key is the spirit and intent of that one ordinance, which is what this first variance is  
549 asking for, is very clear. This is why we have this ordinance. Does this variance...is it consistent with the spirit  
550 of what we're asking for? I don't see how, but that's just my opinion. You guys make the decision. Going  
551 further, residential phasing is to control the implementation and development of tracts of land in future  
552 subdivisions at a rate which will be compatible with the orderly and gradual expansion of community services,  
553 including but not limited to education, fire, road, waste, police, recreation. Okay? The whole spirit of that  
554 particular one section of our ordinance is a safety valve to give the community at large the ability to be able to  
555 handle residential growth in an orderly, predictive, methodical fashion so that we can actually afford  
556 residential projects, whether it's this one or other ones. Okay? When you go to GMO, which is the second  
557 piece of the first request, GMO similarly is there to promote the development of an economically sound and  
558 environmentally stable community which considers and balances our regional development needs. In other  
559 words, we have to share in housing. Okay? But it also says that it's there to help guide us, monitor, evaluate,  
560 and establish a rate of residential growth that is consistent with our capacity. Okay? GMO, on its surface, is  
561 always there to protect us during times when residential growth becomes unsustainable and doesn't allow the  
562 community the ability to catch its breath and stop the rate of residential growth in those time frames. It's a  
563 short term mechanism, okay? What I'm trying to say here is the spirit and intent of both of those ordinances  
564 is very clear. We are saying why they're here, what the intent is. If the applicant has not satisfied this Board  
565 with the fact that this variance is consistent with that, that's one of the five and you shouldn't grant that  
566 particular variance. That's what I'm hoping takes place during this, versus talking about Planning Board issues  
567 and things like that. Your job is really clearly defined. Have they met all five or not for each one of these  
568 cases? And I'm offering to you that if you look at the spirit and intent of each section, your answer is there for  
569 that one of those five. Thank you very much.

570  
571 JIM SMITH: Does anyone else wish to make comments?

572  
573 ANN CHIAMPA: Could I just have a clarification on something?

574  
575 JIM SMITH: We'll attempt to, yes.

576  
577 LARRY O'SULLIVAN: Identify yourself?

579 JIM SMITH: Could you identify yourself?  
580

581 ANN CHIAMPA: Ann Chiampa, 28 Wedgewood Drive. I'm not a Perkins Road resident, but I use Perkins Road  
582 a lot to exit to 93 and come back from work going south on 93 via Perkins. It was stated that there'd be a  
583 maximum of three stories in this development. Isn't the Londonderry height limit's now 35 feet for  
584 residences? For buildings? So four stories would probably be out of the questions anyways. Unless there's a  
585 revision in that law. Also, after going to the Planning Board meetings, I understand there's talk of closing  
586 Perkins. If you're going on Route 28 west, there would be some kind of barrier to be able to...to prevent you  
587 from being able to take a left onto Perkins Road?  
588

589 LARRY O'SULLIVAN: An island. A traffic island.  
590

591 ANN CHIAMPA: And you'd have to go to the next intersection on Vista Ridge Drive, so all the traffic going back  
592 towards Perkins will have to go through Vista Ridge and impact that development, so that's another thing to  
593 be considered. I just wanna make a mention of those two things. I'm not saying one way or the other, but  
594 just two things I've heard, listening to what the Planning...what's going on at the Planning Board, so if you  
595 wanna question them or take that into consideration. That's just something I put on the table. Thank you.  
596

597 JIM SMITH: Anyone else?  
598

599 JAMES FABIANO: James Fabiano, 61 Perkins Road. I got, basically, a question for you. Is this the only idea you  
600 have for this...?  
601

602 JIM SMITH: Wait a minute.  
603

604 LARRY O'SULLIVAN: Over here.  
605

606 JIM SMITH: Direct your questions to us. Then when they have their rebuttal opportunity, they'll then be able  
607 to answer your questions at that point.  
608

609 JAMES FABIANO: Oh. That seems less cost effective, but okay.  
610

611 JIM SMITH: Well, that's just the way the system is supposed to work.  
612

613 JAMES FABIANO: Okay. So, is this his only plan for this property? If you guys say no to 24 units, he's not  
614 gonna build nothing? Is there a way that he could build something else there? He's looking for 240 units.  
615 Is...could you put 240 single family houses there? I know it's one house per acre, but I'm from the city, so 240  
616 houses in 30 acres wouldn't seem that bad. And wouldn't that apply for workforce housing if you owned all of  
617 them and rented them? Or is there any other plan, or is this just it?  
618

619 JIM SMITH: Okay, what we're addressing is the variances that he has asked...has presented.  
620

621 JAMES FABIANO: Yeah.  
622

623 JIM SMITH: And that's what we're looking at at the moment.  
624  
625 JAMES FABIANO: And that's going from...  
626  
627 JIM SMITH: Whether he has any other possibilities, that is beyond the scope of what we're doing here.  
628  
629 JAMES FABIANO: Okay, so we're just voting on going from 16 to 24, that's one of the variances?  
630  
631 JIM SMITH: That's one of the possible variances, yes.  
632  
633 JAMES FABIANO: But then what are doing here? Because you guys aren't gonna say okay to that because you  
634 don't know enough information, correct?  
635  
636 LARRY O'SULLIVAN: It's up to the applicant to provide the information.  
637  
638 JAMES FABIANO: And did he?  
639  
640 JIM SMITH: We're still in the process of developing the information.  
641  
642 JAMES FABIANO: Okay, so is the information gonna be you and him or him, you, and the third person?  
643  
644 JIM SMITH: It could be.  
645  
646 JAMES FABIANO: I'm just trying to figure out what this...  
647  
648 JIM SMITH: In other words, we don't know at this point. We may, at this...tonight, decide to ask for some  
649 additional information and continue the hearing. We could possibly go in and just debate and make a decision  
650 tonight. Until we get to that point, no one can predict what we'll do.  
651  
652 JAMES FABIANO: Okay. And so the variance...alright, no...no further questions. Sorry.  
653  
654 JIM SMITH: Okay. Anyone else?  
655  
656 RICHARD CRAFFEY: Hi, Richard Craffey, 53 Perkins Road. I disagree that it's gonna impact my property value.  
657 I think it will be worth less. We have a real estate agent that told us it would be. The next thing is I disagree  
658 with the land, the area. I think there's better places in Londonderry to put it, such as down behind where  
659 Donovan Spring is. The lady made a point that in their other town, they built this on a resident...more of a  
660 commercial area where there was no houses and that's all I got to say. Thank you.  
661  
662 JIM SMITH: Anyone else?  
663  
664 MICHAEL THOMPSON: Good evening. My name's Michael Thompson. I live at 52 Perkins Road, which is the  
665 white spot right in the middle of the project. I'm opposed to all of the variances, especially increasing the  
666 number of units. I believe that based on what they said tonight about six units per building are single

667 bedroom, that the chances of 180 new children could be born to fill the second bedroom in the two. Possible  
668 even two. Could raise it 360 people, which could definitely impact the school systems. The other thing that  
669 I'm also opposed to is raising the number of buildings. As you can see, they're directly in back of my house  
670 and along side of my house and the picture's pretty, but the real life situation is the Wallace's have pretty well  
671 decimated the trees in that...on that lot. So right at the back of my lot line is pretty much clear, so I object to  
672 all of the variances that are on the table today and I truly believe that if this goes in, that we will have a  
673 horrendous problem with the traffic on exit 4...I mean 5, sorry. Okay?

674  
675 JIM SMITH: Okay.

676  
677 MICHAEL THOMPSON: Thank you.

678  
679 JIM SMITH: Anyone else?

680  
681 HEATHER ANDERSON: Heather Anderson, 31 Perkins Road again. Just one last comment request. Given the  
682 amount of the information we've received this evening, I would ask, I understand there's a lot of information  
683 for the Zoning Board to digest. We had a four hour session where we had fifty or sixty members wanting to  
684 talk last time. A lot of them were a little frustrated. They didn't come back tonight. If you have any questions,  
685 I propose a continuance so that you can validate your information at your side. We can get additional  
686 residents to come in and object. Their concerns over zoning. We can talk about alternate zoning....sorry, not  
687 alternate zoning. We can, as part of the consideration of whether this is the ideal piece of property, we can  
688 actually understand is it, in fact, the ideal piece of property for Londonderry or is it just the ideal piece of  
689 property for this developer and making him the most amount of money? What's best for the town versus  
690 what's best for the developer is not necessarily the same thing. Thank you.

691  
692 JIM SMITH: Okay. Anyone else? Okay, at this point, I'd give the applicant an opportunity to address whatever  
693 concerns that have been raised at this point.

694  
695 JAY LEONARD: Thank you, Mr. Chairman. Well, one of the comments was the, is this the ideal property? And  
696 I think the Board is probably clear that that's not the question before the Board here. But I do think it's a fair  
697 comment. It is one of the...one of the discussions at the Planning Board will be the appropriateness of all of  
698 these issues that have been raised. We fully intend to discuss that further. One of the women who spoke  
699 thought that we were trying to avoid the Planning Board. We're really not and I just want that to be clear.  
700 What we're asking here for is 16 to 24 in terms of units in a building, and we're asking for three year phasing,  
701 and we're asking for a reduction from 75% to 50%. I think a lot of the comments weren't specifically about  
702 those and so I won't go through each particular comment, but I think there are a couple that I...the whole  
703 traffic thing, again, is gonna be addressed at the Planning Board. We have to mitigate traffic if the Planning  
704 Board decides we need...we have an impact and we fully intend to do...to do that. There is no...we're not  
705 asking for density here. This is not a question of density. But I do think there were a couple of comments that  
706 need specific response. First off, the person who had some pictures. The Sleep Inn is substantially larger than  
707 anything we propose. We're not...there's not gonna be six Sleep Inns on this site. Sleep Inn is approximately  
708 15,000 square foot footprint. That's the first floor alone, so we're looking and agree to something along the  
709 lines of 9,400 is our footprint. In fact, that same individual suggested that the Vista Ridge project was fine,  
710 was appropriate in scale. The Vista Ridge project, the footprint, is something roughly over 9,000 square feet.

711 So it's a very similar footprint to what we're proposing. The height; what we propose is no higher than Vista  
712 Ridge and limited to three stories, even though the zoning ordinance under the conditional use permit, you  
713 are permitted four stories. We're agreeing to three stories. I think some of the abutters, and I appreciate  
714 their concern, but I think they're under the understanding that multi-family might not be permitted here. This  
715 is a permitted use in this zone. The Town has gone through the Master Plan process and decided that multi-  
716 family projects are appropriate for this site. We're not asking for that. There were some pictures about  
717 traffic. I think the Board knows, but there's been construction at that intersection for quite a while. We don't  
718 dispute that there are difficulties right there right now. I think the construction is in the process of addressing  
719 some of that, but even more, we will be addressing traffic in a comprehensive way. The Bedford building,  
720 I...we're proud of the building. We're not asking for that building here. To put it in context, that building is  
721 four stories and has 83 units in it. So it's not what we're proposing here. That whole area is different. While  
722 there are residential buildings right next to it, it is very different from this area and probably not relevant. The  
723 gentleman who talked about the spirit of the ordinance, we recognize we have to talk about the spirit of the  
724 ordinance and that's an important thing. I think we addressed it. Just a couple quick comments. First off, the  
725 75% requirement and the no more than 16 unit requirement are both part of the inclusionary zoning, the  
726 workforce housing zoning. So the overall purpose of that zoning section is to provide affordable housing and  
727 affordable rental opportunities and that's clearly the stated purpose. Those restrictions are part of the overall  
728 ordinance, but the restrictions are read in the context of the overall purpose. Clearly, a request to waive those  
729 two restrictions helps provide affordable housing. With regard to the growth control, I understand the  
730 concerns, but there is no uncontrolled growth. There is no problem with the Town meeting its infrastructure  
731 needs. The capacity is there. The rate of growth is not such that it prevents the Town from reasonably dealing  
732 with it, so...Then finally, the gentleman who expressed concern about the increased number of units, the last  
733 gentleman, regarding 52 Perkins Road, I appreciate his comments but Mr. Monahan actually has an agreement  
734 with that gentleman to buy his home and it's signed. Signed by him, so while I understand the concerns, I  
735 don't think they were directly related to the variances requested, but I'd also like the Board to know that there  
736 is a signed P&S with that as to make it part of the overall matter here. So unless the Board has any more  
737 particular questions, I don't need to add anything further.

738  
739 NEIL DUNN: Mr. Chairman?

740  
741 JIM SMITH: Sure.

742  
743 NEIL DUNN: So we're talking about the white spot in the middle here, is the one you have a purchase  
744 agreement? So that wasn't spoken to on the 26 and the additional...?

745  
746 JAY LEONARD: No. That's correct. Since our last meeting, my understand is that there is now a signed  
747 agreement on that.

748  
749 NEIL DUNN: Yeah, but tonight earlier, you were talking about there'd be another 16 or 17 acres over there  
750 that could be developed later...

751  
752 JAY LEONARD: Right.

753  
754 NEIL DUNN: ...and now additionally, this could be thrown into that mix.



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JAY LEONARD: That's correct.

NEIL DUNN: Making that whole...

JAY LEONARD: Yes.

NEIL DUNN: ...project a totally different...or are...open for more devel...okay, thank you.

JAY LEONARD: Right. The plan is that it will be elderly, but that's not a done deal. We're gonna go step by step.

DON ALLY: I have to speak.

JIM SMITH: Wait a minute.

DON ALLY: Yup.

JIM SMITH: He has the floor at the moment.

DON ALLY: Okay.

JIM SMITH: When he's finished, then you'll be given an opportunity.

DON ALLY: Thank you.

JIM SMITH: Any other comments?

JAY LEONARD: Yeah, all set. Thank you.

JIM SMITH: Okay.

DON ALLY: Don Alley, 41 Wiley Hill Road, Londonderry. I am a real estate agent. An offer was made. I represent the seller of 52 Perkins Road. An offer was made. There is no contract. That was just stated there. There was an offer made. The offer is not accepted. There is no agreement on that property. It is signed. The first time when an offer was made by the buyer, the seller rejected it, countered the offer. In that counter offer, they requested that counter offer be in writing, so it was put in writing and signed. It has been two weeks. That offer right now is officially withdrawn because the buyer has never accepted our counter and has not even responded for the last two weeks. So I wanna make that perfectly clear. So the owner on 52 Perkins Road, his objections are clear and he's correct. And while I'm here, I object to the project. It's not...the variances that he's asking for I object to flat out. Thank you.

JIM SMITH: Any further comment>

799 JAY LEONARD: No.  
800  
801 JIM SMITH: Okay.  
802  
803 JAY LEONARD: We do have a signed agreement, but...  
804  
805 TOM MONAHAN: [indistinct].  
806  
807 LARRY O'SULLIVAN: It's not involved with this lot, so...  
808  
809 UNIDENTIFIED: You're the lawyer, you should [indistinct]  
810  
811 JAY LEONARD: But I don't think it's relevant, so thank you.  
812  
813 DON ALLY: An agreement is binding when the buyer and the seller sign it. An offer is not an agreement. I can  
814 offer, okay? There is no agreement. The seller is here, of 52 Perkins. He does not have a signed agreement.  
815 As I said to you, he responded to an offer in writing. The buyer has never responded. The offer is withdrawn.  
816 He doesn't have a signed agreement and until both parties have signed it, you do not have an agreement.  
817 There was verbal discussion and the verbal discussion was even when the seller submitted his written request.  
818 But the answer was "no." But we still submitted it in writing and we waited two weeks and we still haven't  
819 heard. There is no agreement. Make it perfectly clear. I'm not a lawyer, but I know contracts.  
820  
821 JIM SMITH: Okay, we're not debating that.  
822  
823 DON ALLY: I just could leave it said that [indistinct].  
824  
825 JIM SMITH: Okay. I'll bring it back to the Board. Jim, you haven't said anything...  
826  
827 LARRY O'SULLIVAN: Unless you have anybody else in the public.  
828  
829 JIM SMITH: ...or questioned anything.  
830  
831 JAMES TOTTEN: [Indistinct]...you're gonna put me on the spot.  
832  
833 JIM SMITH: Get you involved. Do you have any thoughts or concerns?  
834  
835 LARRY O'SULLIVAN: Questions? Are we deliberating or...?  
836  
837 JAMES TOTTEN: I...  
838  
839 JIM SMITH: No, no. We're...  
840  
841 LARRY O'SULLIVAN: We're still...  
842

843 JIM SMITH: I brought it back to the Board for...  
844  
845 LARRY O'SULLIVAN: ...looking for information or questions or what have you.  
846  
847 JIM SMITH: Right.  
848  
849 JAMES TOTTEN: Right. I don't have any questions for...  
850  
851 JIM SMITH: Okay. Would there be any additional information that anyone would really want to receive to  
852 review?  
853  
854 LARRY O'SULLIVAN: Regarding the economics that I had asked for earlier?  
855  
856 JIM SMITH: Do you think that's worth continuing this?  
857  
858 LARRY O'SULLIVAN: No.  
859  
860 JIM SMITH: Okay. Jay?  
861  
862 JAY HOOLEY: Quick clarification from the applicant; in case number two, you're looking for three year phasing,  
863 regardless of what the final number of units per building? In other words, whether you were granted the 24  
864 or not, you're looking to put this thing online in three years, however many buildings that turns out to be?  
865 That's your request, at least as presented?  
866  
867 JAY LEONARD: Yes.  
868  
869 JAY HOOLEY: Okay.  
870  
871 LARRY O'SULLIVAN: Okay, so that was different information than I thought we were working with. I had the  
872 impression that if these three variance...or the three end, you know, sub-variances there weren't approved,  
873 there'd be no discussion further. That you would not go along with [indistinct] because it wouldn't be  
874 profitable for any one of those reasons.  
875  
876 JAY LEONARD: Well, that's presently right. Our analysis is that it's not profitable without the reduction to  
877 50% and without the 24 unit buildings.  
878  
879 LARRY O'SULLIVAN: And you can't get financing if it's over five years versus three years?  
880  
881 JAY LEONARD: That's right. So...  
882  
883 LARRY O'SULLIVAN: Okay, so any one of those three things then would disqualify this project from being  
884 considered. Alright, so you have to get your...  
885  
886 JAY LEONARD: We'd have to modify the project.

887  
888 LARRY O'SULLIVAN: ...your variance on all three...  
889  
890 JAY LEONARD: Yeah.\

891  
892 LARRY O'SULLIVAN: ...in order for this project to continue.  
893  
894 JAY LEONARD: We have to modify the project, yes.  
895  
896 LARRY O'SULLIVAN: Mm-hmm.  
897  
898 JIM SMITH: I think what you're trying to ask, would this...if you don't get all three variances, would this kill the  
899 project totally or would you then modify it in some way to try to go ahead?  
900  
901 JAY LEONARD: Let me talk to Mr. Monahan here.  
902  
903 LARRY O'SULLIVAN: You talking about the [indistinct] or what? It's not, you know, my issue is...]  
904  
905 JIM SMITH: I think that...isn't that what you're asking?  
906  
907 LARRY O'SULLIVAN: Well, what he has already...  
908  
909 JIM SMITH: Yeah, I'm just trying to get clarification on what you're asking.  
910  
911 LARRY O'SULLIVAN: What he's already said is that if you can't all these...all of them affect the profitability and  
912 they can't have them all, they won't do it.  
913  
914 JIM SMITH: Right.  
915  
916 JAY LEONARD: Yeah. You know, at such an early stage in the process, that's my hesitancy. But right now all  
917 our information is if we don't get these three, then we are gonna have to change the project. Now there are  
918 many, you know, we don't have to do workforce housing. We can do multi-family on the site and it's not  
919 workforce.  
920  
921 LARRY O'SULLIVAN: And you wouldn't have to come here.  
922  
923 JAY LEONARD: That's correct. The goal is to do workforce housing and we continue to have that goal, so the  
924 questions is difficult. I worry about hypotheticals. Right now, I can't see how we can...we can't see how we  
925 can do this as a workforce project without these three variances.  
926  
927 LARRY O'SULLIVAN: Gotcha. And that's, you know, that was my question.  
928  
929 JAY LEONARD: Yeah, and I appreciate that and...  
930

931 JIM SMITH: Okay.  
932  
933 JAY HOOLEY: The zoning is AR-I, right?  
934  
935 LARRY O'SULLIVAN: Mm-hmm.  
936  
937 JIM SMITH: I believe so, yeah. It should be on this...the form.  
938  
939 JAY HOOLEY: That's what I'm...yeah, okay.  
940  
941 JAY LEONARD: Yes, the zoning is AR-I.  
942  
943 JIM SMITH: Do we have enough information?  
944  
945 LARRY O'SULLIVAN: Yup.  
946  
947 JIM SMITH: [Indistinct].  
948  
949 JAY HOOLEY: What you...I mean, that's...I guess they're obligated to make sure they present adequate  
950 information for us to decide.  
951  
952 JIM SMITH: Okay. If that's it, we'll call the public hearing portion of this is closed and we'll go into a  
953 deliberative session at this point. Which means we won't take any additional information unless it's a  
954 technical question which cannot be answered by ourselves.  
955  
956 DELIBERATIONS:  
957  
958 LARRY O'SULLIVAN: Wanna take them one at a time? Go through whether each of us...  
959  
960 JIM SMITH: Well, why don't we get a sense...  
961  
962 LARRY O'SULLIVAN: Of the Board? Sense of the Board first and then run from there?  
963  
964 JIM SMITH: Yeah. Right.  
965  
966 JAY HOOLEY: I think number one...I'm sorry, case number actually two, but the first request has two separate  
967 elements...  
968  
969 LARRY O'SULLIVAN: Right.  
970  
971 JAY HOOLEY: ...and I'll be direct, I think the second element, which is the waiver of the GMO, if the GMO  
972 becomes necessary, I'm not sure I can see how you can demonstrate that the spirit of the ordinance is being  
973 met. I comprehend that they have presented that they...there is a sustainable period of growth right now, but

974 quite frankly, if the GMO does not come into play, that's only going to happen if, in fact, that is no longer the  
975 case, so that portion of that variance request, I, as one member, won't be able to get past.  
976  
977 LARRY O'SULLIVAN: Same here.  
978  
979 JAY HOOLEY: Okay. But that said, that's separate from the remainder of that request.  
980  
981 LARRY O'SULLIVAN: Right.  
982  
983 JAY HOOLEY: I don't know...  
984  
985 NEIL DUNN: But he grouped him together, so therefore there's one variance...  
986  
987 LARRY O'SULLIVAN: It is one variance, right, for both, 'cause that's what they're requesting.  
988  
989 JAY HOOLEY: Is there anything that would prevent us, hypothetically, from granting...  
990  
991 LARRY O'SULLIVAN: Part "A" and not part "B"? It's still the spirit of the ordinance, you know, that's what  
992 you're...  
993  
994 JAY HOOLEY: But again, we haven't even addressed the other half of that.  
995  
996 LARRY O'SULLIVAN: Right.  
997  
998 JAY HOOLEY: I'm simply stating that that half of that one...  
999  
000 LARRY O'SULLIVAN: Would simply knock that one out for you.  
001  
002 JAY HOOLEY: Yes.  
003  
004 LARRY O'SULLIVAN: Okay.  
005  
006 JAMES TOTTEN: I agree. I don't think...I mean, you don't wanna...why tie our hands now on day one? We  
007 don't know what it's gonna look like two, three years down the road. I don't think...  
008  
009 LARRY O'SULLIVAN: So the...are you talking about the spirit of the ordinance again?  
010  
011 JAMES TOTTEN: Spirit of the ordinance [indistinct].  
012  
013 LARRY O'SULLIVAN: And you're talking about, at this point, the combination of spirit and public interest.  
014  
015 JAY HOOLEY: But if...  
016  
017 JAMES TOTTEN: Agreed.

018  
019 JAY HOOLEY: Again...again as a hypothetical, but if you granted the remainder and the GMO never came into  
020 play, then it's quite frankly academic that it wasn't granted.  
021  
022 LARRY O'SULLIVAN: Gotcha.  
023  
024 JAY HOOLEY: Does that make sense?  
025  
026 LARRY O'SULLIVAN: Absolutely.  
027  
028 JAY HOOLEY: Okay.  
029  
030 LARRY O'SULLIVAN: Okay, so...  
031  
032 JIM SMITH: So on the first variance, we've kind of...  
033  
034 LARRY O'SULLIVAN: Three of us have already said that we can't go by part "B," that they've met the spirit of  
035 the ordinance or the public interest.  
036  
037 JAY HOOLEY: One 1.4.7.2  
038  
039 LARRY O'SULLIVAN: 1.4.7.2, right.  
040  
041 JAY HOOLEY: Which is the GMO.  
042  
043 LARRY O'SULLIVAN: Okay, so...  
044  
045 JAY HOOLEY: That said, you now have the other half of that request, which is to increase the number of  
046 dwelling units per building.  
047  
048 LARRY O'SULLIVAN: I didn't seriously see an issue there because I...  
049  
050 JAMES TOTTEN: That's the...  
051  
052 LARRY O'SULLIVAN: I had the impression...  
053  
054 JAY HOOLEY: [Indistinct] phasing, I apologize.  
055  
056 JAMES TOTTEN: That's the phasing?  
057  
058 JAY HOOLEY: Phasing.  
059  
060 LARRY O'SULLIVAN: Are we talking about one or two?  
061

062 JIM SMITH: No, he's still on one. He skipped.  
063  
064 LARRY O'SULLIVAN: Okay, this is phasing.  
065  
066 JIM SMITH: Phasing.  
067  
068 JAY HOOLEY: Phasing number of units. I'm sorry. Assuming no GMO.  
069  
070 JIM SMITH: Well, no, the phasing is regardless.  
071  
072 JAY HOOLEY: Yeah, it's taking the other half of that...  
073  
074 LARRY O'SULLIVAN: That would take....  
075  
076 JAY HOOLEY: ...off the table.  
077  
078 JIM SMITH: Yeah. Yeah.  
079  
080 LARRY O'SULLIVAN: Right.  
081  
082 JIM SMITH: So...  
083  
084 JAMES TOTTEN: But I think the safeguard is similar, right? So, it's still the spirit of the ordinance.  
085  
086 LARRY O'SULLIVAN: You can't [indistinct].  
087  
088 JAMES TOTTEN: From my perspective.  
089  
090 JIM SMITH: Okay. So the sense is that the first case is probably going to go down.  
091  
092 LARRY O'SULLIVAN: We have three people who have already said they can't go with the half of it, so it  
093 wouldn't...  
094  
095 JIM SMITH: Okay  
096  
097 JAY HOOLEY: Half of it.  
098  
099 LARRY O'SULLIVAN: Are you going to place a restriction on the other half? See, that's where I would disagree  
100 also on both public interest and the spirit of the ordinance. Neither of them have been discussed, in my  
101 opinion, to the point where we need to follow the RSA more strongly or more inclusionary than, I mean, than  
102 our own regular ordinances. So, he hasn't given me any information to say this RSA is going to override what  
103 we have already made options for or plans for. Every, you know, all the different possible, you know,  
104 computations that you can put together in multiples and I think we've done a phenomenal job over the years  
105 hammering that out, but...and a lot of the people on Perkins Road had things to do with that, but, you know,



106 our Planning Board and our Town Council and Planning staff spent a great deal of time talking about phasing  
107 and we beat it up one side and down the other, so I think it only makes sense that, you know, everybody has  
108 always said that we should be monitoring our projects and then all of sudden we're not, that makes, to me,  
109 that would be against the public interest and certainly not the spirit of the ordinance whatsoever.  
110

111 JAY HOOLEY: Just to look quickly at the math, 1.3.3.3 would allow three multi-family buildings to go in at 16  
112 units a piece for a total of 48 within a year. I don't know, you kind of got...

113  
114 LARRY O'SULLIVAN: There's a balance there.

115  
116 JAY HOOLEY: ...a chicken and the egg thing...

117  
118 LARRY O'SULLIVAN: Yeah.

119  
120 JAY HOOLEY: ...with number three. You'd have to give them the 24, but if they go to more than 16, it only  
121 allows two buildings and 40 units. Well, they can't leave the last four units of the second building off, so the...I  
122 think by doing only two buildings at 24 for a total of 48, you could be meeting the spirit of the ordinance in  
123 that level of phasing if you were to grant, but again, you'd have to assume the third variance was granted. But  
124 the phasing says three-16 unit buildings within a year for 48 or two-20 unit buildings if you increase to 20. If  
125 they got the third variance, you can't build almost two-24 unit buildings to only 40. You know what I mean?  
126 The math doesn't work. Do...

127  
128 LARRY O'SULLIVAN: Mm-hmm.

129  
130 NEIL DUNN: Mm-hmm.

131  
132 LARRY O'SULLIVAN: So you'd have to combine them anyway, you think.

133  
134 JAY HOOLEY: Out of that...I don't think that's gonna get them to three years...

135  
136 LARRY O'SULLIVAN: Mm-hmm.

137  
138 JAY HOOLEY: ...but it's certainly a reason...it wouldn't be an unreasonable request to expect to be able to at  
139 least build two whole buildings in a given year. If they were granted a 24 a piece, they'd need the 48 units for  
140 the two buildings in order to construct two full buildings. So, I might have been a little circular getting there,  
141 but does everybody comprehend what I'm driving at?

142  
143 NEIL DUNN: Mm-hmm.

144  
145 JAMES TOTTEN: Yeah, they'd need some...some relief there, right?

146  
147 JAY HOOLEY: I mean, there's no point in granting 24. That would functionally limit them to one building per  
148 year.  
149

150 JIM SMITH: Yeah, that would be forever.

151  
152 JAY HOOLEY: Right.

153  
154 JIM SMITH: Which obviously would make it economically unfeasible.

155  
156 JAY HOOLEY: But if they had 24 units per building, the spirit would be met in that only two buildings go on line  
157 per year and the grand total of 48 is still met.

158  
159 JIM SMITH: Yeah.

160  
161 JAY HOOLEY: But again, that assumes that the third variance request is granted. So it's a question, what order  
162 do you wanna take these in? If we don't grant the third one, then that becomes academic anyway.

163  
164 LARRY O'SULLIVAN: What if we started with that one? Why don't we just continue along? Neil, do you have  
165 any input on any of these?

166  
167 NEIL DUNN: I...the first one, I think the phasing, quite obviously, it's against the spirit of the ordinance. That's  
168 why the phasing is there, is when hits those trigger points and we don't know what's coming down the road  
169 and we have to have flexibility. And I also worry about the surrounding property values and that's why I was  
170 trying to read through his presentation here on it. Substantial justice is talking to the Supreme Court and a lot  
171 of it's talking to the workforce housing more generally than specifically to the ordinance or this variance being  
172 requested. The values of surrounding property...the variance relates to the timing of the development. He's  
173 not really talking to it there. It's...the values of surrounding properties will not be diminished is really all the  
174 line says. We had some discussion that...I mean, we had someone from the audience speaking that it would  
175 diminish property, I guess.

176  
177 LARRY O'SULLIVAN: His own personal property.

178  
179 NEIL DUNN: Right, well it's...We didn't get a lot of support there, so I too believe if I owned a residential house  
180 there that that would definitely decrease it, but...

181  
182 JAY HOOLEY: But...

183  
184 NEIL DUNN: So I would have a question there. I'm not sure that that was addressed well. He talks a little bit  
185 about the district and the property and variances, but phasing and restrictions and then the last point is just  
186 the values would not be diminished, so I don't have enough support there to verify that. So I'm against  
187 number two, the spirit and number four, the surrounding property values. There was no supporting evidence.

188  
189 JAY HOOLEY: I just wanna make sure I under...so if they, in theory, did this development, they found a way  
190 that they could tolerate it economically and built 'X' number of 16 unit buildings and phased accordingly, they  
191 could do that. Your feeling is if they phase them in a little quicker, that that is what would create the...

193 NEIL DUNN: They should have separated them from this case. They should have made it two more...another  
194 additional case.

195  
196 JAY HOOLEY: Well, you're saying it's the phasing, how fast this goes in that will diminish the value, not the  
197 fact that...

198  
199 NEIL DUNN: No, I'm looking at the way it's presented. No, I'm looking at what was presented here with the  
200 five points of law.

201  
202 JAY HOOLEY: Right.

203  
204 NEIL DUNN: The first one, you know, the variance, public interest, it's kind of supported because it's  
205 supporting the workforce housing theory of public interest, although you might argue against the public  
206 interest of safety and traffic and residential...other neighbors and character of the neighborhood. We didn't  
207 get into a lot of that, but, you know, he's making the argument that workforce housing is a public interest, so  
208 maybe I can go with that. The spirit of the ordinance, when you're trying to group the phasing, which I think  
209 no, we're very clear on the spirit of the phasing. It's there for us to be able to react. And so to give him relief  
210 from that...to me, just doesn't comply with the spirit of it. The pricing, all I'm saying is the land values, I think,  
211 don't matter what happens there. If he put in a 16 or a 24, it is gonna reduce the values of the residential  
212 properties. If it gets rezoned someday or something, maybe it would change differently, but the way it is right  
213 now, I don't see where there's any supporting information for 'surrounding properties would not be  
214 diminished.' If you look at case 10/17/2012-2, number four, he talks about the variance relates to the timing  
215 and all that, and he just says the values won't be diminished. Well, there's nothing to support it there that  
216 says, you know...?

217  
218 LARRY O'SULLIVAN: Yeah, he didn't do any support for it, he just said does the variance...

219  
220 NEIL DUNN: But he says he's talking about the...

221  
222 LARRY O'SULLIVAN: ...change, affect the values? No.

223  
224 NEIL DUNN: So, to me, I do think it would affect the people in single family residential units that are up and  
225 down that street. But there's no support. So all I'm saying, he didn't support it in the application.

226  
227 JAY HOOLEY: My only question is, if we're still doing case number two, you're saying by virtue of phasing it  
228 quicker, that's what would create the reduction in values? He can make this development in 16 unit buildings.

229  
230 NEIL DUNN: Right, but, all I'm saying...

231  
232 JAY HOOLEY: But you're saying...

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234 NEIL DUNN: No, all I'm saying is I'm taking the five points of laws that's in front of us for the case.

235  
236 JAY HOOLEY: Yeah.

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NEIL DUNN: He can do it differently, he wouldn't have to be here, I wouldn't have to worry about the values. But because he is here, I am worried about the values. That's what one of the five points of law is.

JAY HOOLEY: Right, but it's...the question is, by granting this and phasing it quicker, is that what will create the additional reduction? Not the fact that that property gets developed.

LARRY O'SULLIVAN: You're trying to...each one of the...

NEIL DUNN: I know, you're trying to group them together and unless we look at them line by line, because I would have to go back and forth from number four on the rest of them and see if case -4, where he's looking for 16 and 24...

JAY HOOLEY: Yeah.

NEIL DUNN: ...how he supports it, but we're taking it one by one, which I'm fine with, because it's all gonna wash out in the end. You know, individually, we'll all have our look at the five points. All I'm saying is on this case, the five points, he didn't support it. That's all I'm, saying.

LARRY O'SULLIVAN: He didn't support it for any one of the three.

NEIL DUNN: I don't know, I haven't gotten to the other ones to verify it again what I'm saying. We're taking it one by one and the five points of law.

LARRY O'SULLIVAN: Alright, I see. I see where you're going. Yeah, okay.

NEIL DUNN: And, you know, the phasing, is that...your question is does the phasing make it worth less?

JAY HOOLEY: But that...

NEIL DUNN: Maybe quicker.

JAY HOOLEY: That's the five points...in other words, the five points is relative to the phasing because that particular request is only for phasing, so the question is not what will happen if they make a development of some sort. The question relative on this case is will speeding the phasing create the reduction? Is that what you're saying?

NEIL DUNN: No, all I'm say...all I'm saying is he didn't support it other than the...all I...will it, the questions is will the values of surrounding properties be diminished?

JAY HOOLEY: Based on granting the variance and the variance...

NEIL DUNN: Based on granting the var...which is the...

281 JAY HOOLEY: ...is to expedite the phasing.  
282  
283 NEIL DUNN: Right. So if...oh, okay. So I see where you're going but...  
284  
285 JAY HOOLEY: In other words...  
286  
287 NEIL DUNN: But all he's seeing is the ph...like, kind of like your question is, does the phasing increase or  
288 decrease the property value?  
289  
290 JAY HOOLEY: More than they would otherwise be.  
291  
292 NEIL DUNN: Well, you could argue it would do it sooner. But more...at the end of the whole project?  
293  
294 JAY HOOLEY: Right.  
295  
296 NEIL DUNN: Maybe not. Will it do it sooner? Maybe.  
297  
298 JAY HOOLEY: I don't know what the math totaled, 200...whatever the number is. If you're gonna end up with  
299 that, does the fact that you did it in three versus five years create the reduction in values of surrounding  
300 homes?  
301  
302 NEIL DUNN: Maybe sooner, I guess would be my argument.  
303  
304 JAY HOOLEY: So you might sooner arrive at a reduction that is inevitable?  
305  
306 NEIL DUNN: Yeah.  
307  
308 JAY HOOLEY: Okay.  
309  
310 NEIL DUNN: I mean, I don't know, all I...I'm looking at he's saying it's a phasing thing.  
311  
312 LARRY O'SULLIVAN: I don't see that...I don't see that as an issue for me at all on the value of surrounding  
313 properties.  
314  
315 NEIL DUNN: Well, the thing was...  
316  
317 JIM SMITH: Well...  
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319 LARRY O'SULLIVAN: I agree that overall, this site's going to be multi-family housing because that's what we've  
320 been promoting it for. Alright? I mean, that's one of the things that's been identified as a good use for this.  
321  
322 JIM SMITH: So it's a listed use.  
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324 LARRY O'SULLIVAN: It is a...

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NEIL DUNN: No, I agree with that. Yup.

LARRY O'SULLIVAN: Okay, so...but anyway, that's why I don't agree with that one.

JIM SMITH: It's a permitted use...

LARRY O'SULLIVAN: But I just don't want it...and my issue with this, avoiding the GMO, the Growth Maintenance Ordinance, is that I don't think the Town should be a bystander. I think the Town has always been involved with the construct...with the development and growth as long as I've lived here.

JIM SMITH: What about this builder's remedy? The one [indistinct].

LARRY O'SULLIVAN: Well, I'd like to see that...how that would fly, because frankly, you know, the phasing is part of everyone's growth control in every town in this State. I mean, if you've got growth management at all, phasing is a big part of it. And, frankly, if we were given relief from, I don't know, maybe the...since this is an RSA, maybe the State should say, "Okay, if you have 500 that are promoted here, we'll give you a school to go with it. And we'll pay for the construction of the school, and the maintenance of the school. I mean, an unfunded, like that no child left behind, mandate type thing. An unfunded mandate from the State. That's potentially what this is. Well, anyway, I just don't want the Town to be a spectator. Or a bystander. I wanna see the Town involved with the growth of the project, so...In balance with everything else that's going on in the town because there's tons of other things that are going on. So anyway, we need to be more and more careful as we have huge projects or bigger projects coming up because each one of them can potentially impact everything in the town. All the services. We're already at a rush with...we want more firemen and we want more policemen now. So what's it gonna be like with, you know, over three years, how are we going to be able to get all that in one budget, you know? It's gonna be a toughie. But anyway...Do you wanna go to the next one or do you want to continue on with the ones that we've beat up already?

JIM SMITH: Okay, so the consensus is on the first variance we don't have any...no one...

LARRY O'SULLIVAN: No one thinks that it's gonna pass.

JIM SMITH: So...

LARRY O'SULLIVAN: Okay, so you go to the second one. Let's go to the second one.

JIM SMITH: Okay, go to the second one.

LARRY O'SULLIVAN: This is the 75 to 50.

JIM SMITH: From, yeah, 75 to 50 on the percentage of...

LARRY O'SULLIVAN: And I gotta say, I don't have enough information on that, but it's also just that one in itself is so specifically against the spirit of the ordinance that it's, you know, if we're trying to promote workforce

369 housing and then all of a sudden we say we're gonna allow...we're gonna give all these exceptions and oh, by  
370 the way, we're gonna give this an opportunity to have just half as much as we, you know, as it could be. Or  
371 25% less, whatever that number would be. I don't think it makes any sense how that...in our...both the spirit  
372 of the ordinance or the public interest. How that would be. What did he have to say about that one? The 75  
373 to 50 on the spirit of the ordinance was the spirit is to provide people with affordable housing and that is  
374 exactly the stated purpose of the ordinance. Okay, well, if you wanted to build the Empire State Building and  
375 fill it up with, you know, expensive...or inexpensive apartments, you know, the excuse is the same. How does  
376 this differentiate from the project that's in front of us, you know? I don't under...I don't see how the  
377 relationship fits. So, anyway...

378  
379 NEIL DUNN: Well, he was...oh, no, I'm sorry.

380  
381 JIM SMITH: Jay, then Neil.

382  
383 JAY HOOLEY: Ready? Rock, paper, scissors. Go ahead. Go ahead.

384  
385 NEIL DUNN: No, my point was what...if we look at the paperwork he gave us with the pro forma and 75%  
386 workforce housing and he does his numbers and supposedly, he's asking for 24 units instead of 16 to justify it.  
387 And we were asking, I was asking questions about this. When we look at the presentation he gave us, they're  
388 both giving you 6.5. Yes, the investment is more. The supportable investment is more at the 50% housing, but  
389 it, you know, it wasn't clear. The numbers he gave us, they're claiming they're making their return or their  
390 overall capitalization rate of 6.5%. And it boils down to do they make 1.9 or 2.1 million in a year? Going from  
391 50 to 75. And my biggest concern is, is a new...fairly new ordinance, there was a lot of work put into it, and it  
392 seems to me that the project would work based on the numbers they gave us and the return being 6.5 in both  
393 cases. And it gets back to us maybe not having enough information and maybe not understanding it the way  
394 we should. I'm surely not an accountant. But in the spirit of the ordinance, the ordinance is pretty new. It's  
395 pretty clear they wanted 75%, so I don't know how we get around that.

396  
397 JIM SMITH: Jay?

398  
399 JAY HOOLEY: Taking, I think, a slightly different view on that one, how long have we had a workplace  
400 housing...? How long has this been on the books?

401  
402 NEIL DUNN: 2010, I believe it was...

403  
404 LARRY O'SULLIVAN: No, no. This particular one, you mean?

405  
406 JAY HOOLEY: The workforce housing...

407  
408 NEIL DUNN: Portion of the ordinance?

409  
410 JAY HOOLEY: Yeah.

411  
412 JIM SMITH: But this is the first rental...

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JAY HOOLEY: I guess that's what I'm getting at.

JIM SMITH: ...that someone has tried to do it.

JAY HOOLEY: The intent was to try and get some workforce housing on the market.

LARRY O'SULLIVAN: Mm-hmm. Mm-hmm.

JAY HOOLEY: And nobody has used this to do it yet. Is that accurate?

JIM SMITH: Correct.

JAY HOOLEY: Okay. They are, so if they do it at 50%, are we accomplishing the spirit, which is to get some workforce housing...

LARRY O'SULLIVAN: Can any of it, you mean? Get any as opposed to some of it.

JAY HOOLEY: Yeah. As opposed to, you know, none. Are we accomplishing the core intent if you get 50% of this as workforce housing? Which is to get some more additional workforce housing on the market. Especially as rental property. How we...

JAMES TOTTEN: But the reason to compromise, sorry to interrupt, the reason to compromise from 75 to 50 is economic viability.

LARRY O'SULLIVAN: Right.

JAMES TOTTEN: And I don't see any evidence that there's...it's not economically viable at 75. That was the argument I heard for this particular variance. I don't see any reason from my perspective why we need a waiver on the 75.

JAY HOOLEY: I'm just looking at the spirit.

LARRY O'SULLIVAN: Well, he said that it wasn't economically viable with 75%.

JAMES TOTTEN: The numbers say that it is.

NEIL DUNN: Yeah, that was my point, that the 75...

LARRY O'SULLIVAN: You're talking about the 6.5 percent capitation or whatever the heck it is?

JAMES TOTTEN: Fifty versus...yeah. You got 1.9 million...

LARRY O'SULLIVAN: Capitalization.



457  
458 JAMES TOTTEN: One point nine eight nine million versus 2.1. Yeah.  
459  
460 JAY HOOLEY: Yearly.  
461  
462 LARRY O'SULLIVAN: See, I think there's more to that than what we're looking at. That's why I was shooting to  
463 try and get additional information about this economic impact of this thing.  
464  
465 JAMES TOTTEN: And that's to Neil's point, right? Maybe it's not being interpreted [indistinct] easily intended.  
466 But that's what I'm seeing.  
467  
468 JIM SMITH: Okay. So we're at loggerheads on the 75 versus 50.  
469  
470 LARRY O'SULLIVAN: At loggerheads? Who's agreeing...?  
471  
472 JIM SMITH: No, I'm just saying what [indistinct].  
473  
474 LARRY O'SULLIVAN: You wanna keep talking about that one, right?  
475  
476 JIM SMITH: I'm not going [indistinct]. Okay, let's look at the last one. Twenty four versus the 16.  
477  
478 LARRY O'SULLIVAN: Okay, we've finished going through the...  
479  
480 JIM SMITH: Yeah, we're...it's...  
481  
482 LARRY O'SULLIVAN: No...and hardship was met or not?  
483  
484 JIM SMITH: Well, I get the consensus, the feeling that...  
485  
486 LARRY O'SULLIVAN: He kept saying one each of them...  
487  
488 JIM SMITH: ...most area saying no.  
489  
490 LARRY O'SULLIVAN: On each of them, he said it's obvious.  
491  
492 JIM SMITH: I think Jay was kind of talking in favor of it. Neil was talking against it. You had concerns and Jim  
493 was against it. So that kind of put the second one down. So we're down to the fourth case.  
494  
495 LARRY O'SULLIVAN: Third...okay.  
496  
497 JIM SMITH: Which was a request for 24 units versus the 16 and variance on the dimensional.  
498  
499 LARRY O'SULLIVAN: I didn't have any real issue from...with going from 16 to 24. So...  
500

501 JIM SMITH: Okay. You're talking like you're in favor.  
502  
503 LARRY O'SULLIVAN: I mean, I think that...no, because I thought that it is that particular part of their request  
504 wouldn't be contrary to the public interest. Because the significant difference that they described. It wasn't  
505 that much of a difference in the building size. There wasn't any difference in the amount of units that they  
506 were gonna build. So it...  
507  
508 JAY HOOLEY: They would just build as many units spread over more building.  
509  
510 LARRY O'SULLIVAN: Right.  
511  
512 JIM SMITH: Right.  
513  
514 LARRY O'SULLIVAN: So their overall...  
515  
516 NEIL DUNN: Yeah.  
517  
518 LARRY O'SULLIVAN: ...[indistinct] of the thing was...  
519  
520 JIM SMITH: So the density on the site...  
521  
522 JAY HOOLEY: And they can...  
523  
524 JIM SMITH: ...was less than what the maximum anyway.  
525  
526 LARRY O'SULLIVAN: Right.  
527  
528 JIM SMITH: Either way...  
529  
530 LARRY O'SULLIVAN: Well, you know...  
531  
532 JIM SMITH: Whether you had 24 in each building or 16 in each building, you still ended up with the same  
533 number of units, the same number of cars, the same number of everything else.  
534  
535 LARRY O'SULLIVAN: Which I think is the most important thing.  
536  
537 JIM SMITH: Right.  
538  
539 NEIL DUNN: But how...I guess, how do you get past the ordinance? Again, this is a fairly new section of the  
540 ordinance where they say 16 and they can do 20 and that's it. They can't come to us for the rest of it. I know  
541 we've...there was a discussion on this, but to me, that's the section of the ordinance. How do get past the  
542 spirit of that portion of the ordinance? They were very clear writing that that 16 and 20 was the number. If it  
543 needs to be changed, somebody should approach them and have it changed. So I'm looking at, as a Zoning  
544 Board person, saying it's not even two years old, this ordinance, and they're very specific, saying 16 or 20 and

545 other than that, you don't go to the Zoning Board. So, to me, the spirit was that we don't touch that. When it  
546 was written by the people who wrote the ordinance. I can understand where you could argue the point that,  
547 yes, we can. I'm not...but personally, it was very clearly written that we don't touch it.  
548

549 JAY HOOLEY: Well, I think it was Richard at the last meeting stated that limiting the number of units doesn't  
550 necessarily, in any way, limit the size of the building. You could make 16 really big units and end up with a  
551 larger footprint than with 24...  
552

553 NEIL DUNN: Right and that goes through the Planning Board but that's not what we're here for. We're here  
554 for the variance and on those points and the spirit and to me, it's very clear when they wrote it that that's  
555 what they intended. And that was the spirit of it.  
556

557 LARRY O'SULLIVAN: This is...  
558

559 NEIL DUNN: I guess I'm just throwing that out there. That's my...  
560

561 LARRY O'SULLIVAN: This is the one that I was thinking that we would put a restriction on it as opposed to an  
562 outright variance but that restriction would have to do with the Planning Board and the Planning Board review  
563 of that. Period. And just let it...  
564

565 JAY HOOLEY: So you're saying that you would...  
566

567 LARRY O'SULLIVAN: Because I believe that they would...no, I'm sorry, I think it would be something that they  
568 would have a good long discussion on because of the way it was arrived at the last time. We went from five at  
569 one point, to ten, to 40, to...depending on who you were talking to or whose minutes did you wanna read  
570 from those meetings or see on the TV way back and what I can recall. There were numbers that were all over  
571 the place. And the justifiable reason that I saw that we made a determination...it was kind of like it was  
572 'getting late' and we wanted to come up with something.  
573

574 JAY HOOLEY: So...  
575

576 LARRY O'SULLIVAN: That's my opinion, so...  
577

578 JAY HOOLEY: Are you...?  
579

580 LARRY O'SULLIVAN: That's why I was saying that I would say that we would put a restriction on it so that it  
581 winds up being...  
582

583 JAY HOOLEY: Back at the Planning Board.  
584

585 LARRY O'SULLIVAN: ...back at the Planning Board. Let them do the analyses that they need to for the cost  
586 associated with that and let it go.  
587

588 JAY HOOLEY: So we're...

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JAMES TOTTEN: So what would you say?

LARRY O'SULLIVAN: I would say instead of our Planning Board contemplating the 20, bearing soil or whatever else, those things that....you know, the...

JAMES TOTTEN: Contemplate 24.

LARRY O'SULLIVAN: ...contemplate...just to contemplate the 24. Period.

JAY HOOLEY: I think the applicant indicated, though, unfortunately, that they didn't meet the additional criteria of 2.3.3.7.4.6 in order to get that CUP approved. That said, the Planning Board may find some other compelling reason, I guess, but...

LARRY O'SULLIVAN: Well, what I wouldn't want to do is take it out of the Planning Board's hands to begin with, but this is, you know, the maximum number...

JIM SMITH: Well, if you...

LARRY O'SULLIVAN: ...that I would, you know, say 24.

JIM SMITH: Okay. Larry, if you look at this development plan, it dictates that they go to the Planning Board for a tract proposed development lot. "The development plan shall include general conceptual of the site, architectural plan submission. That detail will show the intent of the plan use structures, improvements, and other features necessary..." It has to be..."the site plan approval has to be according to site plan regulations of the Planning Board." So, it's all...

JAY HOOLEY: Can you go down one more page?

JIM SMITH: You want me to go up or down?

JAY HOOLEY: Down. Thank you.

JIM SMITH: And that's where he gets the density. The number of units permitted is ten. Ten units per acre. And that's where the 16 comes in.

JAY HOOLEY: In accordance with 2.3.3.7.4, but if you go to 2.3.3.7.4, so scroll down...

JIM SMITH: So, again, you got the Town standard for roads.

JAY HOOLEY: Keep going down. Down. Keep going. Okay. The Planning Board may, through granting of the conditional use permit, adjust the standards of any dimensional requirement for multi-family workforce housing, et cetera, et cetera, et cetera. Scroll down.

633 LARRY O'SULLIVAN: You're in 2.3.3.7.4.5?  
634  
635 JAY HOOLEY: Four. Yup.  
636  
637 LARRY O'SULLIVAN: Yeah?  
638  
639 JAY HOOLEY: Keep going. Ah, here we go, 2.3.3.7.4.6.1, additional criteria to increase from 16 to 20. "There  
640 exists on the property limitations; steep slope, wetlands," which apparently there is at least some, "flood  
641 hazard areas, other natural constraints on the subject parcel that reduce the buildable..." You know. That...  
642  
643 LARRY O'SULLIVAN: Right. Okay, so that would be where the relief would be, so as far as I'm concerned, they  
644 would be relieved from...that's 'cause that's what they're asking for, right? Is relief from the additional  
645 criteria, 3.3.3.7.4.6.? So as far as I was concerned, by making that number 24 instead, the Planning Board  
646 would then have the option to use up to 12 to 24.  
647  
648 JAY HOOLEY: But if the Planning Board were still applying that...  
649  
650 LARRY O'SULLIVAN: As opposed to the 16. So that I would make the exception...alright?  
651  
652 JAY HOOLEY: So the first half of that request. Not the second half.  
653  
654 LARRY O'SULLIVAN: Correct.  
655  
656 NEIL DUNN: Say that again?  
657  
658 LARRY O'SULLIVAN: Just change...just give the Planning Board the option to change the number from 16 to 24.  
659 That's all. You know, it's not like this is gonna...  
660  
661 NEIL DUNN: Well, the only thing that is not clear, though, is they're talking about changing the acreage. So if  
662 we gave 24 units, does it...they're talking about 17 acres. It was 19 and now it might be 17, so it's not even  
663 clear that they property line is clear. Does that change the density of what would be allowed or if we say  
664 24...?  
665  
666 LARRY O'SULLIVAN: The maximum. [Indistinct] change the maximum. That's why I was saying maximum of  
667 24.  
668  
669 JIM SMITH: I believe they said based upon the acreage they were talking about, they could support 260 units.  
670 The way they're proposing it is 240.  
671  
672 NEIL DUNN: Right, but if we say you can...so it's ten per...  
673  
674 JIM SMITH: Acre.  
675

676 NEIL DUNN: ...acre. So if they break it up, 'cause they were talking about 23 and some change and then 19  
677 and 17 and they're...  
678  
679 JIM SMITH: Well...  
680  
681 NEIL DUNN: I just wanna make sure if you said 24, that doesn't...the density still stays ten per acre, right?  
682  
683 JIM SMITH: Right. It's still ten.  
684  
685 NEIL DUNN: Okay. So there's not like...  
686  
687 JIM SMITH: So if they reduce the acreage, then the density would have to be compensated. So if they took  
688 out five acres, they'd have to take out fif...they'd drop it from 260 to 210.  
689  
690 NEIL DUNN: Yup.  
691  
692 JIM SMITH: [Indistinct].  
693  
694 NEIL DUNN: Which would give them...which they probably could do because they were going less anyway.  
695  
696 JIM SMITH: No, I'm just saying, but...  
697  
698 NEIL DUNN: Yeah, no. Yeah, no...  
699  
700 JIM SMITH: ...there is a relationship.  
701  
702 NEIL DUNN: ...I'm just trying to think what would happen...  
703  
704 JIM SMITH: So whether you have 24...  
705  
706 NEIL DUNN: Are we...?  
707  
708 JIM SMITH: ...or not, the density is still staying the same.  
709  
710 NEIL DUNN: Right.  
711  
712 JIM SMITH: Still ten per acre.  
713  
714 NEIL DUNN: Okay.  
715  
716 LARRY O'SULLIVAN: We're also just talking this project. We're not talking...  
717  
718 JAY HOOLEY: Any place else at any...  
719

720 LARRY O'SULLIVAN: ...you know, anyplace else.  
721  
722 JIM SMITH: No. No.  
723  
724 LARRY O'SULLIVAN: This is...  
725  
726 NEIL DUNN: No, but the number was a moving number tonight, as opposed to, you know...  
727  
728 JAY HOOLEY: Right.  
729  
730 LARRY O'SULLIVAN: That's why I was thinking that this would be the most reasonable request.  
731  
732 JIM SMITH: Okay.  
733  
734 LARRY O'SULLIVAN: And it seemed to me not to be in conflict with the variance criteria, so...  
735  
736 JAY HOOLEY: So to take Larry's thought, would that be contrary to the public interest? If you're gonna end up  
737 with the same number of units in the development, you're gonna meet the density of units per acre.  
738  
739 JIM SMITH: I think it's a...  
740  
741 NEIL DUNN: Not the public interest. The spirit of the ordinance.  
742  
743 JAY HOOLEY: Okay.  
744  
745 JIM SMITH: Well, I think it's a double whammy. They threw the 16 in and then they said ten per unit, I mean  
746 ten per acre. I mean, they're trying to control the number of units in two different ways. And whether you...I  
747 think one of the things that bothers me about this whole thing one way or the other is because of the  
748 workforce housing State law, there has to be consideration about the economics of the whole project. I would  
749 suggest, since this is the first one we've had anybody even showing any interest into this ordinance, it seems  
750 like it's not very inviting, I guess, for want of a better way, because of the way it's set up at this point. Now,  
751 we could do...what I suggest at this point is, since the first two nobody seems to want to...we don't agree with  
752 anyways, this one doesn't seem to be going, that we...I would accept motions to deny all these and I would  
753 suggest to the applicant that they go back, take another look at their information, and try to develop  
754 information which would address the issues that have been brought up and ask for rehearing. And then we  
755 could look at this a second time at a later date.  
756  
757 LARRY O'SULLIVAN: As an option, you mean?  
758  
759 JIM SMITH: Yeah. As an option. Just so everybody understands, irregardless of the outcome of any case,  
760 there's a 30 day opportunity for someone to file for a rehearing. In the filing of the rehearing, they have to  
761 give us enough information that there would be some new information that would be brought before the  
762 Zoning Board to justify a new hearing. And that's kind of where I think we're at in my mind at this point.  
763 Okay.

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JAY HOOLEY: I'm gonna...

NEIL DUNN: Jay.

JAY HOOLEY: ...dissent on that.

JIM SMITH: Okay.

JAY HOOLEY: I think we should take...there's three separate applications here. Take them one at a time. Maybe this number four first, go through the five points of law and make a decision on that one. Then move to the next one. And we take them separately, not just sweepingly all three. But there are actually five in total, really, with two of them having two elements.

LARRY O'SULLIVAN: Well, I'm sure that's what Jim meant, too.

JIM SMITH: I know. I understand what you're saying, I'm just trying to facilitate the whole thing.

JAY HOOLEY: Okay.

JIM SMITH: Because I think the consensus of the Board, if I read the Board at all, is that we're gonna deny at least two out of the three cases.

JAY HOOLEY: Well...I'm not convinced, but I think we should address all three separately.

JIM SMITH: Okay. Okay.

LARRY O'SULLIVAN: Yeah, I would.

JIM SMITH: Everybody...?

JAY HOOLEY: I mean, if everybody else is in disagreement with me....

JIM SMITH: No, no, no, no.

JAMES TOTTEN: I agree.

JAY HOOLEY: Okay, you'd rather look at all three?

JAMES TOTTEN: Let's vote.

JAY HOOLEY: Okay. Well, we'd...



808 JIM SMITH: Okay.  
809  
810 JAY HOOLEY: We're gonna need a motion first.  
811  
812 JIM SMITH: At this point, I'll entertain a motion. Who wants to make a motion? Either on all three cases in  
813 one or...we really probably should address each one individually so you can come up with your reasoning  
814 behind your...  
815  
816 LARRY O'SULLIVAN: Each one of them, right?  
817  
818 JIM SMITH: Each one.  
819  
820 LARRY O'SULLIVAN: I have mine mixed between, on my variance worksheet here. So it's...  
821  
822 NEIL DUNN: [Indistinct, you gotta keep your sheet straight.  
823  
824 LARRY O'SULLIVAN: Did you wanna do the 16 to 24 first or...?  
825  
826 JIM SMITH: Let's do them in order.  
827  
828 LARRY O'SULLIVAN: No, just do them in order. Alright.  
829  
830 JIM SMITH: Just do them in order.  
831  
832 LARRY O'SULLIVAN: Give me a minute.  
833  
834 JIM SMITH: I think it's gonna come out the same no matter what. Who would like to make a motion?  
835  
836 JAY HOOLEY: I'd still prefer to do number four first because I think number two is somewhat...  
837  
838 JIM SMITH: Okay.  
839  
840 JAY HOOLEY: ...contingent on that, if that makes any...  
841  
842 JIM SMITH: I'm flexible.  
843  
844 JAY HOOLEY: In other words, if you approve, hypothetically, number four, and didn't...that would shed some  
845 different light on number two in that you couldn't have two-24 unit buildings with a 20 unit limit in a given...  
846  
847 JIM SMITH: Okay.  
848  
849 JAY HOOLEY: It just can't happen.  
850  
851 JIM SMITH: Okay. Okay.

852  
853 JAY HOOLEY: Does that make sense?  
854  
855 JIM SMITH: Yeah.  
856  
857 JAY HOOLEY: Okay, so...  
858  
859 LARRY O'SULLIVAN: Alright, go ahead Jim, uh, Jay, go ahead.  
860  
861 JIM SMITH: Do you wanna make a motion on the third variance?  
862  
863 LARRY O'SULLIVAN: Case number four, right?  
864  
865 JAY HOOLEY: Well, I'm just stating my thoughts on what...  
866  
867 JIM SMITH: Okay, well, somebody make a motion.  
868  
869 JAY HOOLEY: Anybody agrees, disagrees?  
870  
871 JIM SMITH: You need to make a...  
872  
873 LARRY O'SULLIVAN: Okay, so what my motion for...I'm not making a motion. What I was saying was that  
874 the...if we made the change from 16 to 24 in the...I just wanna know what section of our ordinance it is. Is it  
875 2.3.3.7.3.1.2?  
876  
877 JAY HOOLEY: Yup.  
878  
879 LARRY O'SULLIVAN: Increase to 24 as a maximum?  
880  
881 JAY HOOLEY: Mm-hmm.  
882  
883 JIM SMITH: Yeah.  
884  
885 LARRY O'SULLIVAN: And then, therefore, granting the relief for the other two criteria; 2.3.3.7.4.5 and 7.4.6.  
886  
887 JAY HOOLEY: Well, you were saying originally not to grant relief, though. That they'd still need to go to the  
888 Planning Board with that, right?  
889  
890 LARRY O'SULLIVAN: Absolutely. Yeah.  
891  
892 JAY HOOLEY: Okay, so we would grant relief on those two portions of that.  
893  
894 LARRY O'SULLIVAN: Right. There wouldn't...  
895

896 JIM SMITH: Yeah.  
897  
898 LARRY O'SULLIVAN: They don't even need to consider them, right? 'Cause those are the rocks...  
899  
900 JIM SMITH: No, just...what exactly do you wanna do?  
901  
902 LARRY O'SULLIVAN: I'd like the motion...I don't want them to not take this to the Planning Board and have the  
903 Planning Board say your soils are no good. You can't do 24 or what have you.  
904  
905 JIM SMITH: Well, well, okay. Well, if you look at the beginning of the ordinance on this section...  
906  
907 LARRY O'SULLIVAN: Right.  
908  
909 JIM SMITH: ...for them to have a workforce housing, they have to get a conditional use permit, period.  
910  
911 LARRY O'SULLIVAN: Right.  
912  
913 JIM SMITH: Irregardless of what you do on anything else. We're not giving any variances on that.  
914  
915 LARRY O'SULLIVAN: Yes.  
916  
917 JIM SMITH: So if you increase it from 16 to 24, the only thing that they wouldn't have to go through would be  
918 the conditional use that addresses that 20.  
919  
920 LARRY O'SULLIVAN: Which is the 2.3.3.7.4.5 and 2.3.3.7.4.6, correct?  
921  
922 JAY HOOLEY: But what you were saying is you wanted them to still go through that process. Increase the  
923 number from 20 to 24, really, under that portion, but still require that conditional use permit to take place?  
924 Planning Board approval of it still.  
925  
926 LARRY O'SULLIVAN: Yes.  
927  
928 JAY HOOLEY: Yeah.  
929  
930 LARRY O'SULLIVAN: Do you see the need for that, Jim? Was that like, a redundant thing or is that a...?  
931 Anyway.  
932  
933 JAY HOOLEY: I'll...and I'm more than happy to withdraw it if...  
934  
935 JIM SMITH: Well, I think the problem, you have to look at what that section is saying because even if you want  
936 to change the 20 to 24, the criteria in that section wouldn't permit them to give it anyway. They'd still be  
937 stuck at the 16.  
938  
939 NEIL DUNN: Mm-hmm.

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LARRY O'SULLIVAN: Okay. Perhaps I didn't make myself clear. It wouldn't be the 20 that would change 24. It is the 16, the prior paragraph, that we would change to 24. I would think that that would be...

JIM SMITH: Well, okay. If they go from...

LARRY O'SULLIVAN: They have nowhere to go from there but down because we're making that the maximum.

JIM SMITH: Okay, no, here's where the problem I have with it. If you look at the basic set of rules for multi-family, it's 16. They wanna increase that 16 to 24.

LARRY O'SULLIVAN: Right.

JIM SMITH: What section did he refer...?

NEIL DUNN: It's 3.1.2 is the initial, but then 4.5 and 4.6 also talk to the conditions to make them allow that. The conditional...[indistinct].

LARRY O'SULLIVAN: That's the economic viability again? I wanna make sure that they get through that.

NEIL DUNN: 7.3.3.7.4.6.2 is the applicant must demonstrate to the Board the limitation of the number of units at 16 makes the overall project unfeasible.

JIM SMITH: Yeah, okay.

LARRY O'SULLIVAN: That's the economic feasibility.

NEIL DUNN: Because of the cost. That's the economic...6.2...2.3.3...

LARRY O'SULLIVAN: I'm gonna make sure that happens.

JIM SMITH: Okay, so the 16 is in 2.3.37.3.1.2. That's the one where you get from...where they're trying to go from 16 to 24.

LARRY O'SULLIVAN: Right.

JIM SMITH: It's got nothing to do with 2.3.7.4.6.

NEIL DUNN: Well...

JAY HOOLEY: Yeah, I'll make an attempt here. I'll make a motion to approve case number 10/17/2012-4 in part; that we increase the number from 16 to 24 units under 2.3.3.7.3.1.2, contingent upon Planning Board approval and conditional use permit for the increase. That's the end of my motion. What that would allow is

983 the Planning Board to go from 16 to 24 if they deem it meeting the criteria it needs to meet. Which would  
984 then compel them to make that argument to the Planning Board.

985  
986 LARRY O'SULLIVAN: The cost argument.

987  
988 JAY HOOLEY: Yeah. We're out at that one. It's still contingent upon the Planning Board doing the CUP for the  
989 increase. We're simply allowing that number to go from 16 to 24 upon approval for the CUP. As opposed to  
990 them going from 16 to 20.

991  
992 LARRY O'SULLIVAN: I think that accomplishes what I thought would be fair or met all the criteria, at the very  
993 least. And if that...what do you think, Jim? I mean you're knee deep into it.

994  
995 JIM SMITH: Well, I think the problem with, if you force them to go back to the 4.6.1, as I read that, it  
996 doesn't...they wouldn't meet the criteria there for any increase, whether it's 20 or 24. Because they have  
997 good soils, minimal slopes, minimal wetlands.

998  
999 NEIL DUNN: Yeah, but the next one...isn't the next one for the financial?

000  
001 JIM SMITH: The what?

002  
003 NEIL DUNN: The next...2.3.3.7.4.6.1 and 2 talks to the financial, doesn't it? I think it's either/or, or is it only...it  
004 has to be the slope and all that too?

005  
006 LARRY O'SULLIVAN: I don't know. I...

007  
008 NEIL DUNN: Alright, so if we go back to six; additional criteria to increase the maximum number.

009  
010 JIM SMITH: [Indistinct].

011  
012 JAMES TOTTEN: It's all.

013  
014 JIM SMITH: Okay.

015  
016 NEIL DUNN: Where the following additional must be met in order to increase...oh, so it has to be all of it. So I  
017 don't know how you're getting that. I...it's going against the spirit if you ask me.

018  
019 LARRY O'SULLIVAN: The going from 16 to 24?

020  
021 NEIL DUNN: Mm-hmm. You have to go through all that to even get to 20 and it's the whole spirit there. That's  
022 where I had the biggest issue. I mean, I was starting to go with that way, but it's saying in addition to five  
023 above, it has to meet the wetland setbacks and it has to be a financial burden. And there we are, going  
024 increasing it and it's quite clear in ordinance. I don't...

025  
026 JAMES TOTTEN: Feels like we're doing it all out of order.

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LARRY O'SULLIVAN: Right. It seems like it.

JIM SMITH: Well, okay. No, I'm just trying to digest what's written here. When you look at 4.6.1 and 4.6.2 they give you two different criterias. One is addressing the physical property.

NEIL DUNN: Yup.

JIM SMITH: The second part is address finances. Now, the problem I have with the way this is written, it doesn't say 4.6.1 *or* 4.6.2. It seems to me, the way it includes both of those criteria.

NEIL DUNN: Exactly.

LARRY O'SULLIVAN: [Indistinct] right. What they're request...

NEIL DUNN: It does. It says "in addition to 2.3.3.7.5," so in addition to that, it must meet this too. So both of those.

JIM SMITH: So if you leave those two things in, they may be able to demonstrate the 4.6.2 part of it...

NEIL DUNN: But not the other.

JIM SMITH: But not the 4.6.1 part of it.

NEIL DUNN: And that's when I start saying we're butting up against the spirit.

JIM SMITH: See how I'm reading it?

LARRY O'SULLIVAN: Yeah.

JIM SMITH: It's not one or the other. It's both.

NEIL DUNN: It's both.

JAY HOOLEY: Well, that's the review and decision that the Planning Board would make based on the motion made.

JIM SMITH: Yeah, but...but...

JAY HOOLEY: Right?

JIM SMITH: But what's on there and what they've told us about the property...

JAY HOOLEY: Again, that is what the Planning Board will decide based on the motion made.

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NEIL DUNN: [Indistinct] spirit.

LARRY O'SULLIVAN: Well, I'm...

JIM SMITH: Okay, who's making...

[Overlapping comments]

LARRY O'SULLIVAN: I agree with you...

JAY HOOLEY: ...by the way, so, I mean...

JIM SMITH: Okay.

LARRY O'SULLIVAN: I agree with you and I'll second that.

JIM SMITH: Okay. So we have a motion and a second.

LARRY O'SULLIVAN: Now, I don't know whether that was a second for discussion or not, but my concern isn't the soils and so forth because it appears that we've already identified this is a lot that's going to have multi-family housing on it and the density's gonna be higher. So that's already taken care of as far as I'm concerned. The issue, to me, all along has been there's a matter of dollars here and we don't have a way to quantify it properly and fairly and, you know, equally, I guess, as far as I'm concerned, about how you make this so that it fits both the RSAs and our own requirements for how do you tell if this thing's gonna be a goldmine for somebody or if it's gonna make, you know, help us meet our goals of workforce housing? And that's the criteria that I wanna make sure we cover. So, I would feel most comfortable with having this...the Planning Board review that completely. And to have them do the outside consultant thing on it. So...anyway. You have a motion and a second.

JIM SMITH: Right. So at this point, we'll attempt to take a vote. All those in favor of the motion?

LARRY O'SULLIVAN: Aye.

JAY HOOLEY: Aye.

JIM SMITH: Okay, we got one, two. Two in favor. The motion fails. So I'll entertain another motion.

NEIL DUNN: I thought we weren't doing that anymore. I thought the motion was the vote.

LARRY O'SULLIVAN: It doesn't have restrictions. This one...

NEIL DUNN: But I thought the motion was the vote.

115 LARRY O'SULLIVAN: Okay.  
116  
117 NEIL DUNN: No, I'm just clarifying.  
118  
119 LARRY O'SULLIVAN: Yeah.  
120  
121 JAYE TROTTIER: It is. But that motion...that vote...that motion failed.  
122  
123 LARRY O'SULLIVAN: It failed, right, so that now somebody may make a motion for the same item...  
124  
125 NEIL DUNN: Gotcha. That's what...it's getting late.  
126  
127 LARRY O'SULLIVAN: ...without all the restrictions.  
128  
129 NEIL DUNN: I'm sorry, you're right. I apologize.  
130  
131 JIM SMITH: Yeah. So who wants to make a motion now?  
132  
133 LARRY O'SULLIVAN: I don't suspect it would be the two of us.  
134  
135 NEIL DUNN: I'll make a motion to deny case 10/17/2012-4 as item two, the spirit of the ordinance is clearly  
136 spelled out in 2.3.3.7.4.5 and additionally down in 2.3.3.7.4.6; that the number of units in the building are  
137 really up to the Planning Board and it's a fairly new ordinance and it's not in the spirit of the ordinance.  
138  
139 JIM SMITH: So, do we have a second?  
140  
141 JAMES TOTTEN: I second.  
142  
143 JIM SMITH: Okay, we have a second. All those in favor of the second motion?  
144  
145 NEIL DUNN: Aye.  
146  
147 JAMES TOTTEN: Aye.  
148  
149 JIM SMITH: Aye. All those opposed?  
150  
151 LARRY O'SULLIVAN: Nay.  
152  
153 JAY HOOLEY: Nay.  
154  
155 JIM SMITH: So at three to two, that motion passes so...that's to deny.  
156  
157 [Members filled out their voting sheets for Case No. 10/17/2012-4 and the Clerk read the vote into the  
158 record].



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JIM SMITH: Okay. Why don't we go to case -2. I'll accept a motion on that one.

LARRY O'SULLIVAN: Okay, mine was for both not meeting either one or two and it would be to deny. So do you want a motion for any one of those or the one that I'm proposing. Is everybody gonna support...or will I have enough support for both?

JAY HOOLEY: The variance as a whole, I can't get past the GMO if active. Not applying it, so...

JIM SMITH: So...okay. Who's gonna...?

LARRY O'SULLIVAN: This is the phasing.

JAY HOOLEY: Right.

LARRY O'SULLIVAN: And relief from the permit restrictions under Section 1.4.7.2.

JAY HOOLEY: Right, that's the GMO.

JIM SMITH: Right. Growth Management. So who's making the motion?

LARRY O'SULLIVAN: Jay's doing just fine.

JIM SMITH: Jay?

JAY HOOLEY: I'll make a motion to deny case 10/17/2012-2, Wallace and Steensburg, in that the request does not meet the spirit of the ordinance and granting that variance would be contrary to the public interest.

LARRY O'SULLIVAN: Because?

JAY HOOLEY: Because they did not demonstrate that not having the Growth Management Ordinance apply to them met either of those criteria or points.

LARRY O'SULLIVAN: Well, I was hoping that when we address the Growth Management Ordinance part of it, that it would be how could we take that project by itself, away from everything else that happens in town. So, you know, making it, you know, uniquely subject to no growth ordinance or a limited growth ordinance really is what the issue is, right? That's against the public spirit...

JAY HOOLEY: 1.4.7.2. I'll withdraw the motion if you can frame it better.

LARRY O'SULLIVAN: Okay, work with me on this. Nobody seconded it. So...

JIM SMITH: Right, so he withdrew it, it wasn't seconded. So the floor is yours.

203 LARRY O'SULLIVAN: Okay. I make a motion to deny case 10/17/2012-2 since neither the public interest would  
204 be met, since the entire town has the Growth Management Ordinance in effect, and there are other  
205 opportunities throughout the town for growth that are currently on our books that will be impacted or  
206 potentially impacted by this project and that the spirit of the ordinance would not be observed since the  
207 public safety, our schooling, and roads and infrastructure have to have controlled, managed use and the  
208 additional impact of 240...potentially 240 uncontrolled units or houses significantly impacts the remaining  
209 possible growth in the town. Is that too much? Only about a paragraph, right? Or would it be more simple to  
210 say that it just wouldn't meet the spirit of the ordinance and it certainly isn't in the public interest.

211  
212 JIM SMITH: I think that would be simpler.

213  
214 NEIL DUNN: I second that.

215  
216 JIM SMITH: Okay, so we have a motion and it's been seconded. All those in favor of the motion?

217  
218 JAY HOOLEY: To deny.

219  
220 NEIL DUNN: Aye.

221  
222 JIM SMITH: To deny.

223  
224 JAMES TOTTEN: Aye.

225  
226 JAY HOOLEY: Aye.

227  
228 LARRY O'SULLIVAN: Aye.

229  
230 JIM SMITH: Aye. Is that everybody 'ayes'? Okay.

231  
232 [Members filled out their voting sheets for Case No. 10/17/2012-2 and the Clerk read the vote into the  
233 record].

234  
235 JIM SMITH: Okay and we're on case three now which is the one about the 75% versus the 50%. Who wants to  
236 make a motion? You're on a roll.

237  
238 LARRY O'SULLIVAN: You mean because I'm keeping it simple?

239  
240 JIM SMITH: Yes.

241  
242 LARRY O'SULLIVAN: I really don't think that's in our best interest to keep it that simple, though, so...

243  
244 JIM SMITH: Well...

245  
246 LARRY O'SULLIVAN: Jay could...

247  
248 NEIL DUNN: Well, I think we've had discussions, though, on it, talking about it, so that's on the record. You  
249 want me to give it a whirl?  
250

251 LARRY O'SULLIVAN: Go ahead, Neil. Please.  
252

253 NEIL DUNN: I'd like to make a motion to deny case 10/17/2012-3 based on the fact that granting the variance  
254 would be contrary to the public interest as presented; that it's for workforce housing and restricting the  
255 percentage of the project to less than our ordinance, it is not in the best public interest; and additionally that  
256 the spirit of the ordinance requiring 75% was to increase and maximize workforce housing and this is looking  
257 to reduce, so therefore this is not in the spirit of the ordinance.  
258

259 LARRY O'SULLIVAN: Okay. I'll second that.  
260

261 JIM SMITH: Okay, all those in favor?  
262

263 LARRY O'SULLIVAN: Aye.  
264

265 JAMES TOTTEN: Aye.  
266

267 JIM SMITH: Aye.  
268

269 NEIL DUNN: Aye.  
270

271 JAY HOOLEY: Opposed.  
272

273 JIM SMITH: Opposed. Okay, so we've got one opposed and one...  
274

275 [Members filled out their voting sheets for Case No. 10/17/2012-3 and the Clerk read the vote into the  
276 record.]  
277

278 RESULT: THE MOTION TO DENY CASE NO. 10/17/2012-2 WAS APPROVED, 5-0-0.  
279

280 THE MOTION TO DENY CASE NO. 10/17/2012-3 WAS APPROVED, 4-1-0.  
281

282 THE MOTION TO DENY CASE NO.10/17/2012-4 WAS APPROVED, 3-2-0.  
283

284 RESPECTFULLY SUBMITTED,  
285

286   
287

288 NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

289  
290  
291

**APPROVED DECEMBER 19, 2012** WITH A MOTION MADE BY LARRY O’SULLIVAN, SECONDED BY NEIL DUNN  
AND APPROVED 3-0-0.