

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

DATE: MARCH 18, 2015

CASE NO.: 11/19/2014-4 (REHEARING)
(WITH REFERENCE TO CASE NOS. 11/19/2014-5 AND 6)

APPLICANT: FIRST LONDONDERRY ASSOCIATES, LLC
80 NASHUA ROAD
LONDONDERRY, NH 03053

LOCATION: 30 STONEHENGE ROAD AND 113 HARDY ROAD, 12-120 & 131, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
NEIL DUNN, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
BILL BERNADINO, NON-VOTING ALTERNATE
DAVE PAQUETTE, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/HEALTH/ZONING
OFFICER

REQUESTS: CASE NO. 11/19/2014-4: VARIANCE TO ALLOW 24 DWELLING UNITS PER
MULTI-FAMILY BUILDING WHERE A MAXIMUM OF 16 UNITS IS
ALLOWED BY SECTION 2.3.3.7.3.1.2.

CASE NO. 11/19/2014-5: VARIANCE TO ALLOW THE PERCENTAGE OF
WORKFORCE HOUSING UNITS IN A MULTI-FAMILY WORKFORCE
HOUSING DEVELOPMENT TO BE LIMITED TO 50% WHERE A MINIMUM
OF 75% IS REQUIRED BY SECTION 2.3.3.7.1.1.4.

CASE NO. 11/19/2014-6: VARIANCE TO ALLOW PHASING OF A
PROPOSED WORKFORCE HOUSING DEVELOPMENT OVER THREE YEARS
WHERE OTHERWISE LIMITED BY SECTION 1.3.3.3, AND TO EXEMPT SUCH
DEVELOPMENT FROM FUTURE IMPLEMENTATION OF GROWTH
CONTROL REGULATIONS AS PROVIDED IN SECTION 1.4.7.2.

PRESENTATION: Case Nos. 11/19/2014-4, 5 & 6 were read into the record with one
previous case listed. However, each variance listed above was reviewed
and voted on separately after Bill Tucker spoke to his Exhibits P and Q.

JIM SMITH: Okay, I received three of these e-mails. Do you want to...?

46 NEIL DUNN: Let me see if they are the same one's I've got? I got...

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48 JIM SMITH: I presume they are?

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50 NEIL DUNN: I was going to bring that up. We should read those in because those are e-mails that were
51 received by some...some were copied to everybody, some copied to a couple of people.

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53 JIM SMITH: Just for your information. If somebody is going to send an e-mail they really note on the e-mail
54 whether they want the e-mail to be entered into the record. These don't, but out of courtesy, I'm going to
55 have them done anyway, but typically in a letter you request your letter to be submitted as part of the history
56 of the case, but an e-mail unless you specifically say that really isn't quite in that same class.

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58 [The Clerk read into the record Exhibits M, N and O].

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60 JIM SMITH: At this point, the applicant has the floor.

61
62 BILL TUCKER: Good evening Mr. Chairman and members of the Board. Again, for the record my name is Bill
63 Tucker. I'm with the Wadleigh, Starr and Peters law firm in Manchester. With me tonight is Samir Khanna,
64 brother to Raja who was here at the last two meetings. He is also a principle in First Londonderry Associates.
65 Yesterday, Mr. Chairman, I submitted a summary. You'd asked last time that I try to address the five points for
66 each one in a summary fashion. I submitted that to Jaye, and I have hard copies of that if anyone would prefer
67 to have hard copies of that?

68
69 JIM SMITH: Yeah, okay? Is it on this?

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71 [Overlapping comments]

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73 JIM SMITH: Where do I look?

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75 [Overlapping comments]

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77 JIM SMITH: Okay, I have the first one for the twenty four (24) units.

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79 BILL TUCKER: Okay, I also submitted two...sort of one page summaries. [See Exhibits P and Q]. The first, I'm
80 trying to deal with the background on how workforce housing plays into this. The second page was an analysis
81 of the Supreme Court's focusing on the first two criteria, and what we need to show there because in your
82 denial it was primary the first two criteria that we got denied on...on all three of the variances. I'm not sure
83 what order those things were loaded into your computer, but again, I'm going to start with the one that says
84 back ground and overview which is applicable to all three variances.

85
86 JIM SMITH: Okay.

87
88 BILL TUCKER: What we are dealing with here is not a use variance. The use that we are asking for is a
89 permitted use on this property, and we are doing no more, or no less. Actually, a lot less than what's
90 permitted because the density we're planning to put on is only forty six (46) percent of what would be
91 permitted, but it is a permitted use. The three variances going from sixteen (16) to twenty four building per
92 unit; going from seventy five (75) percent to fifty (50) percent of workforce units, and asking for the
93 construction to be phased over three (3) years as opposed to six (6). Are provisions that restrict and hamper

94 the economic ability of the developer to do this project, and the three restrictions conflict with two things.
95 They conflict with the purpose of the zoning ordinances inclusionary housing provision which purposes is, and
96 I'll quote here for the record *"To encourage and provide for the development of workforce housing within
97 Londonderry...to insure the continued availability of a diverse supply of home ownership and rental
98 opportunities meeting the definition established in the State of NH's Workforce Housing statutes ..."*. Those
99 statutes provide that *"In every municipality that exercises the power to adopt land use ordinances and
100 regulations, such Ordinances and regulations shall provide reasonable and realistic opportunities for the
101 development of workforce housing, including"*, and I emphasize here...*"rental multifamily housing."* It's not
102 just single family it's multi-family, and the statutes defines reasonable and realistic opportunities as
103 *"Reasonable and realistic opportunities for the development of workforce housing' means opportunities to
104 develop economically viable workforce housing within the framework of a municipality's Ordinances and
105 Regulations adopted pursuant to this Chapter and consistent with RSA 672..."*. So the key there is economically
106 viable workforce housing, and we have submitted reports by Russ Thibeault. I believe those have now been
107 reviewed by the Town's consultant, and have been verified. We believe, and it's very clear that those reports
108 show that these three ordinance provisions make the property development, as we proposed it, economically
109 impossible. Therefore, we believe that these variances need to be granted. This is a setting where these two
110 provisions of the state statute, and the provision of your ordinance act as an umbrella, or a canopy that has to
111 go over the five criteria. It's sort of an overriding criteria. It sets the framework for which everything must be
112 looked at. The only comparable thing that I can think of is the Telecommunications Act that provides that
113 every town must make available locations for cell towers. I don't know if any of you were on this Board when
114 the Daniel's case was before it, but your Board granted variances for a cell tower. That was appealed and the
115 courts said that that has to be taken into consideration. It has to be an umbrella in which you view everything.
116 So given that background, I want to go over the criteria of the three variances, but...

117
118 NEIL DUNN: If I may Mr. Chairman? Could you...I was here for the cell phone thing, and before we get
119 convoluted in the rest. I don't remember...what was your statement? It was appealed?

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121 BILL TUCKER: Yes, your decision was appealed. It went to the State Supreme Court.

122
123 NEIL DUNN: I don't recall loosing, I don't...?

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125 BILL TUCKER: No, you won.

126
127 NEIL DUNN: Right, okay...

128
129 [Overlapping comments]

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131 NEIL DUNN: ...I wasn't clear what your point was there, so I was...

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133 BILL TUCKER: I was just trying to make...

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135 NEIL DUNN: ...just trying to make clarification. Thank you.

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137 [Laughter]

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BILL TUCKER: Reading that decision your Board took into consideration the Federal statute in granting the variance. Your approving decision was appealed by some abutters and the court said you did exactly right; you had to take into consideration that Federal statute.

NEIL DUNN: Okay, thank you. I wasn't clear...

BILL TUCKER: Right.

NEIL DUNN: ...and maybe because I was...I do apologize.

BILL TUCKER: This is a similar situation where we've got an overriding state statute. In the denials, the first two components of the tests you found that we did not meet that and so I want to just give a little back ground on what the state Supreme Court has said in that regard. [See Exhibit Q]. The first two of the statutory criteria which must be met in order to grant a variance - that the variance will not be contrary to the public interest and that the spirit of the ordinance will be observed, - - have been the subject to a number of Supreme Court decisions. The most recent one was Harborside Associates v. Parade Residence Hotel. This was a 2011 case. The Court stated that the first step in analyzing whether to grant the variance would be contrary to the public interest and would be consistent with the spirit of the ordinance was to examine the ordinance and the provisions representing what the public interest was. The court stated "*Accordingly, to judge whether granting a variance is contrary to the public interest, and is consistent with the spirit of the ordinance, we must determine whether to grant the ordinance would 'unduly and in a mark degree, conflict with the ordinance such that it violates the ordinance's basic zoning objects.'*" So merely conflicting with the ordinance is insufficient because every variance conflicts with the ordinance. The Court went on to recognize two methods for ascertaining whether granting a variance would violate an ordinance's basic zoning objectives. The first was to examine whether granting the variance would alter the essential character of the neighborhood; that's one. The other was to examine whether granting the variance would threaten public health, safety, or welfare. So it's these two components the character of the neighborhood, and public health, safety and welfare that we need to look at when asking whether the variance would be contrary to the public interest, or the spirit of the ordinance will be observed. So with that background, I'd like to proceed to go through the three variances, and review the criteria and our position on that. And I see Mr. Thibeault has arrived so we have both Mr. Fougere and Mr. Thibeault here to answer any questions that may arise out of the reports that they have submitted, and the [Inaudible] that they've done. So with respect to the first variance where we are asking for twenty four (24) units as opposed to sixteen (16), on the first two criteria whether the variance will be contrary to the public interest or the spirit of the ordinance will not be observed. We look at those two criteria the Supreme Court said; one the essential character of the neighborhood, and we stated here that the essential character of the neighborhood will remain the same. The footprints of the buildings will be exactly the same. They will simply be one story or approximately ten (10) feet higher. The buildings closest to Stonehenge Road will be the same distance from Stonehenge Road whether the buildings contain sixteen (16) or twenty four (24) units and we have a good degree of landscaping there between the buildings and the road. The buildings will also be of a height that is within that permitted by the Londonderry zoning ordinance. The buildings located on the other side of Stonehenge Road, the multi-family buildings and the buildings closest to Stonehenge Road have also been situated such that the narrow side of the buildings face the road as opposed to the longer what could be called the front side of the building. In addition, the land slopes away from

182 Stonehenge Road such that the additional floor on those buildings which are located further into the site will
183 not be visible from the road. In addition, permitting twenty four (24) buildings per unit as opposed to sixteen
184 (16) will reduce the number of buildings from eighteen (18) to twelve and this will leave substantially more
185 green space on the property. The closest building will be more than one thousand (1,000) feet from the
186 residences on Hardy Road and consequently the an additional story added to each building to permit the
187 additional eight units per building will not be visible from those residences on Hardy Road. We've also
188 submitted letters from Ralph Valentine of the Valentine group who's stated that the proposed use will not be
189 out of character with the neighborhood. The building envelope will be substantially buffered from the
190 properties located to the south and southwest by both natural and manmade buffers which are the utilities
191 and sewer easements. Mr. Valentine also stated that the property is bounded by a thirty five (35) mobile
192 home cooperative and a forty eight (48) unit multi-family housing project which is across Stonehenge Road.
193 Verani Realty also submitted a letter with respect to this issue which stated although the new development
194 seems to fit well within the surrounding properties it is situated to be insulated from abutting single family
195 homes. On the public health and safety criteria. These twenty four (24) units will not threaten public health,
196 safety or welfare. Mr. Fougere report submitted states that the Town of Londonderry infrastructure is not at
197 risk and there are no significant improvements that will be required by this proposal. The housing task force
198 for Londonderry has identified this property as a site appropriate for high density multi-family development.
199 Adequate public water, sewer, utilities are currently available at the site. On Stonehenge Road several
200 hundred feet to the west the property has ample frontage on Stonehenge Road for access. There will be
201 access on Hardy Road. The overall density permitted by the zoning ordinance is ten (10) units per acre and we
202 are only proposing to have forty six (46) percent of that permitted density. In conclusion, the twenty four (24)
203 units rather than the sixteen (16) units per building do not raise any health, safety or welfare issues. The
204 impact on health, safety and welfare will be exactly the same whether or not there are sixteen (16) or twenty
205 four (24) units per building. We also believe that this is within the spirit of the inclusionary housing ordinance
206 since we are providing a diverse supply of housing ownership in the property and rental opportunities for
207 persons meeting the definitions in New Hampshire statutes for workforce housing. Finally, with respect for
208 the eighteen (18) versus twenty four (24), Mr. Fougere's report details the discussion of the Planning Board
209 and Town Council on the issue of the number of units per building. It is submitted that that discussion, if you
210 look at the history of it, makes clear that there was no rationale or overriding basis for sixteen (16) units per
211 building. The state statute allows for zoning ordinances to deal with height and size of building. Nowhere
212 does it deal with the number of units per building. One can envision a building of sixteen (16) units to three or
213 four times the size of a building with sixteen (16) units. You could have units that could be four thousand
214 (4,000) square feet, or units that are eight hundred (800) square feet. It doesn't have anything to do...the
215 number of units per building with the size of a building, and it just is a very odd criteria that I submitted isn't
216 even permitted by state statute...that regulation. So in conclusion, we submit that the overriding purpose of
217 the inclusionary housing section of the zoning ordinance sets forth the basic zoning objective which the
218 Supreme Court says must be kept in mind when considering the variance. That we meet the criteria of not
219 altering the characteristic of the neighborhood, or having any impact on public health, safety or welfare. Gong
220 on to the substantial justice standard. The Supreme Court has also set forth in a 2007 case entitled Marlarky
221 versus Chichester. What that standard should be, and it's a vague one. It said perhaps the only guiding rule
222 on this factor is that any loss to the individual that is not outweighed by a gain to the public. You've got to ask
223 is there any gain to the public by enforcing this ordinance, and weigh that against what is the loss to the
224 applicant, or the loss to the public. We would submit that permitting twenty four (24) buildings as opposed to
225 the required sixteen (16) will result in no loss to the general public. In fact, there will be a gain because they'll

226 be six (6) fewer buildings and therefore more green space will be preserved, and the project will be
227 economically more feasible has been indicated Mr. Thibeault's report and therefore we will be able to supply
228 workforce housing to the Town as the units become available. In combination with the other requested
229 variances, the Town will be able to satisfy the state statute which requires that reasonable and realistic
230 opportunities be made available for the construction of workforce housing. So we believe that substantial
231 justice has been done, and I believe you've found that in your initial decision. The surrounding property
232 values will also not be diminished. This is clearly evidence by the Valentine and Verani reports that have been
233 submitted. We will not be impacting the Hardy Road residences. We will not have access on that, and be
234 more than a thousand (1,000) feet away, and going from sixteen (16) to twenty four (24) units per building
235 really doesn't in it of itself have any impact on the neighborhood in values. With respect to unnecessary
236 hardship, we believe that that exists since there is no fair and substantial relationship between the general
237 public purposes of the ordinance provision, and the specific application of that provision to this property. The
238 zoning ordinance rationale for restricting the number of units to sixteen (16) per building is unclear as is
239 evidences by Mr. Fougere's report and his examination of the debate that went on that time. The increased
240 height of the building resulting from the additional one story does not exceed that height permitted by the
241 zoning ordinance, and the footprint of the building will be not increased by increasing the number of units in
242 the building. The propose use is a reasonable one as evidence by the fact that this property was identified as a
243 suitable site for workforce housing by the task force. In addition to the first criteria the hardship test, we
244 submit the second is also met since the property cannot be used in strict conformance with the ordinance, and
245 this variance is necessary to enable the reasonable use of the property. Mr. Thibeault's report details a
246 significant cost of site work and building costs over four million eight hundred thousand (\$4,800,000) dollars.
247 That would be the increase in costs if we have to go to sixteen (16) units per building as opposed to twenty
248 four (24). The project is not economically feasible without the variance being granted. The impact of limiting
249 the size to sixteen (16) units is immense and does not result in the zoning ordinance providing reasonable and
250 realistic opportunities for the development of the workforce housing. We believe we have satisfied this
251 criteria, and I would also mention that I believe in our original decision, you found that this hardship did exist.
252 That is my presentation with respect to the variance for the twenty four (24) versus sixteen (16) units. Again, I
253 mentioned Mr. Fougere's report, I've mentioned Mr. Thibeault's report. They're both here. If you you'd want
254 to pause here to ask them any questions on this variance...

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256 JIM SMITH: Yeah, I think we should.

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258 BILL TUCKER: ...we can do that, or we can continue. Your...

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260 JIM SMITH: I can open it up to the Board if they have any questions on this particular variance. We're talking
261 about the variance from changing the number of units of the building from sixteen (16) to twenty four (24).
262 That's what we're talking about and nothing else.

263
264 NEIL DUNN: If I may Mr. Chairman? You're referencing that you're doing forty six (46) percent density, and
265 that you would be allowed to have...or you'd be allowed to have a lot more than two hundred eighty eight
266 (288) units. Your plan that shows the eighteen (18) buildings of sixteen (16) units did you do the surveying,
267 and those fit all setbacks you would be here for not reason for that if you built them as sixteen (16) unit
268 buildings

270 BILL TUCKER: That is correct. We would need no variances for setbacks, or any other...
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272 NEIL DUNN: So there's no wetland, ledge or something that would restrict you from hitting two hundred and
273 eighty eight (288) using that foot print of the eighteen (18) units?
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275 BILL TUCKER: That is correct. There's wetlands in the back, but we stay more than the required distance away
276 from that, and have sufficient setbacks on all sides. The site is sixty three (63) acres, and I think we're leaving
277 about forty (40) undeveloped.
278
279 NEIL DUNN: Yeah, but often times people talk about I could have so much density; however, because of
280 wetlands, or whatever else you could...
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282 BILL TUCKER: Yeah.
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284 NEIL DUNN: ...so I'm just verifying that the eighteen (18) buildings; two hundred eighty eight (288) units is
285 attainable? You would be here for no variance. You did your due diligence, and you could fit that on that land
286 without some other kind of need?
287
288 [Overlapping comments]
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290 BILL TUCKER: Yeah.
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292 SAMIR KHANNA: I believe we have the plan actually?
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294 BILL TUCKER: Yeah, we have the...I think we have the plan? Is the plan around?
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296 NEIL DUNN: Right, it just didn't give dimensions, and I don't know, you know...I don't know, there's no
297 dimensions there if you were following it? So I was just looking for clarity, and um...
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299 BILL TUCKER: Yeah.
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301 [Overlapping comments]
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303 NEIL DUNN: ...acknowledgement from you folks...that yes indeed you could fit those eighteen (18)...
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305 SAMIR KHANNA: Yes.
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307 NEIL DUNN: ...units with sixteen (16) each and not be here in front of us for anything on this variance?
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309 SAMIR KHANNA: Correct.
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311 [Overlapping comments]
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313 BILL TUCKER: That is correct.

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NEIL DUNN: Clinically. It gets back to the workforce housing component and the viability?

BILL TUCKER: That is correct.

NEIL DUNN: Thank you.

JIM SMITH: Anyone else? Anyone in support have any comments? Anyone one in opposition? Comments on this variance? Well somebody's already coming up. We're just talking about the number of units.

PAULINE CARON: I realized that. Is this on?

JIM SMITH: Yeah. I believe so.

PAULINE CARON: Pauline Carol, 369 Mammoth Road. I'm not an abutter to the property. I live about a mile south of the intersection of Stonehenge Road and Mammoth Road. Now, I heard them say that this project would not be economically feasible...it was cause a hardship? Now, hardship refers to land use only. It does not refer to any loss made by the developer. If the property can be put to any use without a variance then no hardship under RSA 673:33 Roman numeral one (1) capital B, five (5) B. If the land is reasonably suitable for a permitted use then there is no hardship and no ground for a variance. Thank you.

JIM SMITH: Anyone else?

DEB PAUL: Deb Paul, 188 Hardy Road. On the sixteen (16) units, I was listening to...I guess he's the lawyer? Say that he could do it no matter how many units...this that and the other thing. That he could do...he's never seen it...the size become an issue. But if he was to build these buildings that were just as tall and as wide and only had twelve (12) units in them. You'd be getting a heck of a lot more money than your fourteen (14)? Is that correct? When you were saying...

JIM SMITH: Wait a minute, wait a minute. Direct through the Board...

DEB PAUL: Sorry.

JIM SMITH: ...not...

DEB PAUL: Alright, when he was stating...do you know what I'm talking about? He said that...oh, I don't understand why you're talking about sixteen (16) units this that and the other thing. It's a matter of the footprint?

JIM SMITH: Correct.

DEB PAUL: And that we could do twelve (12). He said Twelve (12), and the same footprint as a twenty four (24), but the point is if you did twelve (12) units in the same footprint as a twenty four (24) those twelve (12) units, or those twelve (12) apartments...you would be getting two thousand (\$2,000), three thousand (\$3,000)

358 dollars for because they would be ginormous. So there is a difference. The difference is in the financial cost of
359 the size of the building. So it's not the same. I just wanted to state that I thought when you got a rehearing
360 you had to bring something new to the table? I've been coming to these meetings now three, four times, and
361 I have not heard not one thing new since you denied them, and I just wanted to state that. As well Ms. Caron,
362 the simple fact that the hardship is not about the financial hardship. It's about hardship on the land, and
363 how...if you have no other options this is your last resort to do something with this piece of property. That is
364 where the hardship comes in to play. That is not what I am hearing. They have many, many options. They
365 choose not to use it. Thank you.

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367 JIM SMITH: Anyone else?

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369 GREG STANLEY: Greg Stanley, 112 Hardy Road. I understand that the builder could build eighteen (18)
370 buildings with sixteen (16) units each and the total size of the building would be less. It would be more in
371 nature with the neighborhood. It wouldn't be a large big boxed styled type of apartment complex like we see
372 at Vista Ridge, which I think is a ginormous type of build out. If you drive by there, whether it's during the day,
373 or night, you can obviously see those buildings. So I think anything that can be done to minimize the size.
374 Again, if they want to build eighteen (18) buildings...you know they're going to build six (6) extra buildings.
375 They mentioned at a previous hearing that because they have so much land that people from Hardy Road
376 aren't going to see the buildings anyways. Then my opinion would be build smaller. Build something that's
377 nicer. That's more in scale with the neighborhood so that it doesn't have as much of an impact on the existing
378 neighborhoods...right? I understand that we have the Stonehenge apartments there. They are more like
379 duplexes. They're not these huge...you know big box apartment complexes that we see in other towns. Part
380 of the reason that we live in Londonderry is because of the rural aspect, and I believe that is what the
381 ordinance was trying to get to when it was throwing out this number of sixteen (16). We didn't want this huge
382 big box style apartment complexes being built in the neighborhood. So again, I would encourage you...they
383 have plenty of land. They can throw in the additional six (6) buildings. My interpretation from what they have
384 said in the past is that we won't see them because they have plenty of land there to do the extra six (6)
385 building build out. I would say that that in my mind makes the most sense. Just to back that up. I was doing
386 some research and I read about Trail Haven Drive and how the attorney who represented Neighborworks
387 which was representing the Trail Haven Drive build-out, which is townhouse style multi-family housing build
388 out. She said that they wanted to build townhouse style units spread across multiple buildings. They have
389 done similar projects that have been successfully developed in Hooksett, Goffstown, and the concept has
390 proven to be more appealing to residence because it has a homey feel. Now one of the things I don't want
391 them to do once this goes in is them to not be able to make a profit because it's going to be the future upkeep
392 of this property that is going to ensure that those of us who are surrounded by this behemoth build out don't
393 lose property values. It's...you know they have mentioned earlier that their profit margin is razor thin, so my
394 concern is if they're not able to upkeep the property that those of us who are unfortunate enough to live next
395 to water and sewer lines in town. Alright, public water and sewer lines that's what this all comes down to.
396 We are unfortunate in north Londonderry to be surrounded by public water and sewer lines that builders
397 come in and they want to hit these large tracts of land and put up these big box style apartment complexes.
398 So again, I would urge you to think about those of us who are immediately impacted and taking the brunt of
399 this for the town. Smaller, I think does connote a more homey feel. I think it's more visually appealing. They
400 have enough land to put the other six (6) buildings far enough back that we won't see them. I don't think we
401 need to go up an extra story so that they make sure we can see them from the road. Thank you.

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JIM SMITH: Is there anyone else who would like to speak at this point? Yes, sir. There is a mic on this side. You don't have to come all the way across.

DOUG ZINKEVICZ: It's okay. My name is Doug Zinkevicz. I live at 251 Winding Pond Road. I think the big...well, my concern is they say oh more units you're not going to increase traffic. Well, I think...

JIM SMITH: We're not talking about traffic.

DOUG ZINKEVICZ: No?

JIM SMITH: Not at this point.

DOUG ZINKEVICZ: Well Sir, it kind of is because you build more units you're going to have occupants. You're going to have more traffic, and...

[Overlapping comments]

JIM SMITH: Again, I'm trying to limit the comments to those which are germane to the issue. Traffic and the number of occupants and so forth are not part of this. That's dictated by another set of rules.

DOUG ZINKEVICZ: Okay.

JIM SMITH: In other words, they're saying they can have only have forty six (46) percent of the number of units that could be on that property. So that's all we're talking about at this point. So I'm trying to limit the comments to what is germane to what we're discussing. Go ahead.

DOUG ZINKEVICZ: No, that's a good point. I don't know what else to say?

JIM SMITH: Okay.

DOUG ZINKEVICZ: Thank you.

JIM SMITH: Wait a minute. Is there anyone else who would like to talk first? Give everybody else a first choice a first choice before...

[Overlapping comments]

JIM SMITH: And again, we're talking about twenty four (24) units versus sixteen (16).

BILL GARVEY: I just had a question for the Board?

JIM SMITH: Yeah.

446 BILL GARVEY: Bill Garvey, 110 Hardy Road, Londonderry. I just want to know what was wrong with the
447 decision you made last time about this application, and what was wrong with that decision, and why we are
448 here today? Again?
449

450 JIM SMITH: We were advised by legal counsel that it was in our best interest to have a rehearing.
451

452 BILL GARVEY: Can anyone be granted a rehearing, or on any issue, at any time?
453

454 JIM SMITH: It's at the discretion of the Board.
455

456 BILL GARVEY: I see.
457

458 JIM SMITH: Just to explain it. The way the procedure works on a hearing. If someone is denied, they have to
459 apply for a rehearing. The Board then has a choice at that point to either grant it or deny it. If they, the
460 Board, chooses to deny it, then they can go immediately and appeal to the case to the Supreme Court. Superior
461 Court would rather have the Zoning Board review the whole case and have a second bite of the apple before
462 the case ends up in the court. So basically that the logic as to why we are here. It's not just if there's new
463 information. It's to make sure that we have the opportunity to review all of the information a second time,
464 and to make sure our decision is a valid defensible decision.
465

466 BILL GARVEY: Thank you.
467

468 [Overlapping comments]
469

470 JIM SMITH: Wait a minute, wait a minute. Still go somebody else ahead of you.
471

472 [Overlapping comments/Laughter]
473

474 GEORGE YANKOPOULOS: Good evening Gentleman. My name is George Yankopoulos. I live at 49 Stonehenge
475 Road. Here in town. I've been here for a great number of years. I won't bore you with that. Question to you?
476 Talking about hardship, is this time to talk about the hardship portion when reference to the three issues that
477 were coming before you tonight?
478

479 [Overlapping comments]
480

480 GEORGE YANKOPOULOS: Because I hear a little bit...excuse me.
481

482 JIM SMITH: Yeah...
483

484 GEORGE YANKOPOULOS: I hear about hardship so I'm not sure? I don't come to meetings that often...sit on
485 the sidelines. So I'm not sure if I'm going the right thing here? But if it's a question of hardship and
486 developing this property for the use of hardship...as a businessman whose owned a number of companies.
487 Some not so good...some very good. I wish I had the opportunity to say...I have to have this criteria, and if I
488 don't have this and I claim hardship as a reason to get something done. I have a piece a property I'd like to
489 buy down the street here put a gas station and an electric charging station and say...if you guys don't do it's

490 hardship. You're not allowing me to make money. I wish I had that capability with a number of my business
491 ventures in the past to be able to say...hey you're not allowing me to charge as much money that's hardship so
492 I'm going to charge my...have my vendors charge me more so I can justify it. I have a question about coming
493 to the Board. I've also heard and understand and read the different issues about hardship and how to use the
494 term hardship in development. I just ask you guys to look at that hardship.
495

496 JIM SMITH: Okay, as a partial answer to your question.

497
498 GEORGE YANKOPOULOS: Yes, Sir?

499
500 JIM SMITH: We also are dealing with the workforce housing RSA which is 674:59.

501
502 GEORGE YANKOPOULOS: Okay.

503
504 JIM SMITH: And part two of this addresses the hardship to some extent. The way it reads, "a municipality
505 shall not fulfill the requirements of this section by adopting voluntary inclusionary zoning provision that rely
506 on inducements that render the workforce housing development economically unviable".
507

508 GEORGE YANKOPOULOS: I understand.

509
510 JIM SMITH: So that also enters into the hardship. So that's the hardship part of it that we are talking about.

511
512 GEORGE YANKOPOULOS: But that work...you see, I was trying to be careful because the workforce portion of
513 it is part of the other part of one of the other variances.
514

515 JIM SMITH: Well we're dealing with that particular section of our ordinance.

516
517 GEORGE YANKOPOULOS: [Inaudible]

518
519 JIM SMITH: So that enters into the what...and that section of ordinance has to comply with this RSA, and if it
520 doesn't then we have a problem.
521

522 GEORGE YANKOPOULOS: Right, I understand, and I understand that the determination of that definition of
523 hardship is based on that portion of it...okay, we want to throw in workforce housing. That's a different
524 argument for a later moment.
525

526 JIM SMITH: Right.

527
528 GEORGE YANKOPOULOS: Once again, speculation on the premise of that hardship to be able to accomplish is
529 a business tactic I wish could have in the private sector. That's all I have to say. Thank you, gentlemen.
530

531 JIM SMITH: Okay. Anyone else?

532
533 DEB PAUL: Now I can...

534
535 JIM SMITH: Now you can have it.
536

537 DEB PAUL: ...alright, I'm sorry. Deb Paul, 118 Hardy Road. As you guys were talking one of the things that you
538 had mentioned was character and I will state again just because we have apartments around us we are still a
539 neighborhood and small houses. As a matter of fact, there are a lot of houses...single families coming in there.
540 Yes, that does have an effect on our resale value of our house, and that is not what the real estate person is
541 talking about. The assessed value does not change, but when I want to take my house to market is when my
542 house changes. The other thing and I think this comes into play? You spoke about safety. I did a little
543 research and I went to Southern New Hampshire Institute and I looked from 2009 to 2011 of crashes and
544 accidents. The top five (5) in Londonderry are every single one of those intersections on Stonehenge. Totaling
545 fifty eight (58) car crashes on Bartley Hill/Stonehenge/Mammoth, Mammoth/Stonehenge, Stonehenge/Hardy,
546 Stonehenge/Perkins, and Stonehenge/and 28. So it is a safety issue, and there's a safety issue when you're
547 talking about those high densities. I don't know if the school buses are going to be able to get in there and
548 turn around? Are they going to have to stop on Hardy which is already now a dangerous road? To pick
549 up...and I know this isn't it, but this is to think about...would it be easier for a school bus to go in and in a more
550 sprawled area than a high dense area? That is also something...I know it's Planning Board, but as far as
551 something you need to take into consideration to?
552

553 JIM SMITH: Okay. Wait, wait, okay.
554

555 PAULINE CARON: I'm Pauline Caron, 369 Mammoth Road. When the workforce housing statute...ordinance
556 rather came into effect, I went to all of the meetings, and the reason it was put at sixteen (16) is because we
557 did not want big buildings. The ordinance read sixteen (16) units. Twenty (20) if it was for elderly housing. I
558 think Mr. Fougere stated last meeting that it was up to twenty (20). It's sixteen (16) and the reason we did it
559 because we didn't want huge buildings to keep the character of the town. That's all I have to say. Thank you.
560

561 JIM SMITH: Okay. Is there anyone else on this issue?
562

563 GREG STANLEY: I just want to make sure that I understand the economics from the Board's perspective. Did
564 the Board provide any building specs to the builder that the builder has to adhere to and that's where financial
565 hardship is coming from? I don't believe that to be the case, so I guess my point being is that the builder has
566 chosen to build these buildings in such a manner it has such a cost. That again, I believe that they can build on
567 this particular property using the way that the ordinance is written building smaller buildings that are more in
568 nature with these surrounding properties so that there's less impact on....again, those of us who happen to be
569 in the general area. Again, unless the Board has stipulated that they must build in a certain way, I guess I
570 don't understand why we're on the hook for decisions that they've made when they can certainly make other
571 decisions and build more economically and still be able to have their project. I guess that's all I have for right
572 now. I'm sorry.
573

574 NEIL DUNN: Mr. Chairman, if I may? The reason this case was continued from last month to this month is
575 because we requested that the applicant let a third party look at the specs and provide a detailed...I was
576 calling it better resolution...because my fear was kind of along those lines that if they're putting in fountains
577 and gold plated fixtures then the prices could be inflated. They did give us back lists. We did have a third

578 party person look at it for the town's side, and its standard building construction. Although, they might have
579 some high end appliances or something, but nothing that was extravagant that was going to blow the budget
580 numbers out. So we did take that into consideration. The third party did review it and find that the numbers
581 were in line with what was submitted. So we did look at that to try to do some due diligence.
582

583 JIM SMITH: Just to go a little bit further on that point. We asked them to break it down into one report based
584 upon each of the variances being granted independent of the others and showing the net rate of return for
585 each of the scenarios. In each of them, and like Neil said was reviewed by a third party. All brought out the
586 fact that it was economically didn't make sense to build with any one of the variances and to make the thing
587 work you had to get all three of the variances. So we have that information...it's kind of a lengthy report, I
588 don't know if...
589

590 NEIL DUNN: In the records somewhere?
591

592 JIM SMITH: Yeah. Anyways, we have that information. Okay, go back...wait a, wait...
593

594 GEORGE YANKOPOULOS: Just a point for clarification...
595

596 [Overlapping comments]
597

598 JIM SMITH: You have to get to a mic sir.
599

600 [Laughter/Overlapping comments]
601

602 JIM SMITH: It's more for the record so we...
603

604 GEORGE YANKOPOULOS: That's okay, I used to do this thirty years ago in front of Boards like this. Point of
605 clarification? You received the report, or the analysis...
606

607 JIM SMITH: Right.
608

609 GEORGE YANKOPOULOS: ... of the workforce housing ordinance. Okay. And the business plan only works on
610 that one particular scenario?
611

612 JIM SMITH: Correct within the framework of the workforce housing ordinance.
613

614 GEORGE YANKOPOULOS: Okay, good enough.
615

616 [Overlapping comments]
617

618 DEB PAUL: Deb Paul, 118 Hardy Road. About the workforce housing...again, I did a little research and I figured
619 out where HUD has put Londonderry. We're connect to Londonderry, Candia, Deerfield, Norwood...up in that
620 area, and the rent that they're saying we can accept is one thousand four hundred (\$1,400) dollars. But if you
621 look at Derry, Derry is in another area, and Derry can only take one thousand two hundred (\$1,200) dollars.

622 Then you look in Windham, and Windham little cluster is one thousand one hundred and twenty (\$1,120), and
623 Bedford is only one thousand twenty (\$1,020) dollars. So you ask yourself? The answer is they want to come
624 here because this is the only place that they can ask for that kind of rent. Unfortunately, we're clumped in to
625 a bunch of towns that are much more rural than we are, but they have no sewer and water. So therefore, the
626 only place for them to come is here, and that is the reason why they are coming here. That is the reason why
627 they want to do this type of workforce housing. It's not doing us a favor.

628
629 BILL GARVEY: Bill Garvey, 110 Hardy Road. You were talking about the economic feasibility and the figures
630 they gave you about the project. You found them to be in line. Do you consider...did they mention there were
631 granite counter tops going into these units? Do you know?
632

633 JIM SMITH: Again, part of what you have to be...understand about this...when they build a workforce housing
634 unit, and you have other units which are going to be for open rent...you know market rent, they have to be
635 physically identical. They are also trying to...I would presume appeal to the people who would want those
636 types of amenities to rent. So even though the rent on the workforce housing is limited by the way the law is
637 crafted. Which is basically tied into the median income and I think it's sixty (60) percent and you can't have
638 more than thirty (30) percent, or something to that effect? I think it's for a family of three (3). They all have
639 to be the same. So if you rent unit A of building I, and I rent unit B and I'm workforce housing subsidized, and
640 you're paying the full rent you wouldn't know the difference.
641

642 BILL GARVEY: Yeah, I follow you.
643

644 JIM SMITH: So that's why they all have to be built...I think the way it's worded in a similar architectural
645 manner, so...
646

647 BILL GARVEY: Well, I agree with Mr. Stanley. I believe the whole...the phrase economically unviable is being
648 brought on by the developer. I also feel that the term that we've heard here thirty (30) or forty (40) times
649 here in the last several months...razor thin margins has been brought on by the developer, and not the town. I
650 think that unnecessary hardship that has been spoken that has been spoken about has been brought on by the
651 developer in his specifications. In his costs, and not by the town. Thank you.
652

653 BILL TUCKER: I just want...
654

655 JIM SMITH: Wait a minute, wait a minute, wait a minute. Is there anything new that you're going to say sir?
656

657 GREG STANLEY: I'm going to try.
658

659 JIM SMITH: Okay.
660

661 GREG STANLEY: I remembered what I was going to say last time. Greg Stanley, 112 Hardy Road. I don't
662 believe that their restricted from...again they can build on the property. They can build smaller size buildings
663 instead of the twenty four (24) units. They can build the sixteen (16) and they could petition, or go for a
664 variance where they only have twenty five (25) percent workforce housing and seventy five (75) percent
665 normal rental. Again, my concern is it in character with the neighborhood and are they going to be able to

666 upkeep the property because the ongoing maintenance of the property is what is going to have a longer term
667 impact on those of us who are surrounding it. So again they presented one scenario and their asking you
668 guys...hey you have to vote on this one scenario and yet when I look at it there are other alternatives. They
669 could build less. They don't need to build two hundred and eighty eight (288) units. They have to build two
670 hundred eighty eight (288) units under the 50/50 scenario that they are trying to go for, but can they build
671 less? Again, this particular area is not like near Vista Ridge, or where Wallace Farm is which has easy access
672 off of 93. As we all know. This particular area is in a highly...is in a much more congested area as Deb had
673 mentioned with the traffic studies that along Stonehenge Road those...there's been multiple accidents and it's
674 one of the highest rated in the town. So again my question is why can't they move around some of their
675 variable so that they can use the land as they sit fit without having to apply for these...you know going to
676 twenty four (24) from sixteen (16) which is my opinion is more of an eye sore, right? I'm just trying to
677 preserve the character of where we live. I know none of you all probably live in that area, but we live in that
678 area and we're trying to preserve the character as much as we can so that it long term has less of an impact on
679 us. I would appreciate if you guys would take that into consideration. Thank you.

680
681 JIM SMITH: Now it's back to the applicant.

682
683 BILL TUCKER: Okay. I just need to speak a little bit about the economics because as you rightfully pointed out
684 this is really driven by the economics. The project has to be economically viable in order to meet the state
685 standard. What we're asking for here in these three variances is the minimum that will make this
686 economically viable. The project would be much more economically viable; have a better rate of return if we
687 went to thirty six (36) units per building because it's cheaper to build the more units you put into a building
688 the cheaper it is to build. You have less foundations. Obviously, going to the twenty four (24) units reduces
689 the number of buildings by six (6). That's six (6) less foundations. Six (6) less roofs. Those types of things is
690 what add up to the four million eight hundred thousand (\$4,800,000) dollars in difference in costs that bring
691 this down. We could bring it down even more and make the return to the developer even greater if we went
692 to thirty six (36) units per building, or in the next variance if we went to twenty five (25) percent affordable
693 housing as opposed to fifty (50), but in putting this project together what we tried to do and what we're
694 asking for is the variances that will make this work. Not really work really well, but make it work, and so what
695 we've presented and going through all the different parameters on how to bring this together is...we're asking
696 for the minimum that'll make it work - twenty four (24) units not thirty six (36); fifty (50) percent not twenty
697 five (25)...I just want to put that out there that we know what economically viable is and that's what we're
698 asking for. We're not asking for it...make it economically fantastic just viable. I think the reports that you
699 have...and again Mr. Thibeault can address any questions on those show that we need all three and we need
700 them just what we're asking for because we barely meet the standards when we get what we ask for.

701
702 MARK FOUGERE: Mr. Chairman, Mark Fougere, Fougere Planning. Just to clarify to record. In your ordinance,
703 just to be clear, on page 41 the ordinance specifically notes that an applicant can go to twenty (20) units by
704 getting a Conditional Use Permit from the Planning Board. The criteria for that we don't meet. That's why we
705 aren't having that option, but it's not only restricted to elderly housing it's in your workforce housing
706 ordinance. I just wanted to make that clear. Also...

707
708 JIM SMITH: Why don't you go into why you don't meet the criteria?
709

710 MARK FOUGERE: You need a very tough site. Either ledge or wetlands or steep grades, and you have to meet
711 that criteria...you know this came up with other projects that we looked at, and it you don't meet that criteria
712 you can't go up. Our site doesn't meet that characteristic. It's a better quality of site, so we can't go up under
713 that criteria. Also, the ordinance does allow for up to four (4) stories in the district. So if character was a
714 concern, I don't think the writers would have allowed up to four (4) stories. Again, the buildings...the site
715 fades away from the road. The short side of the buildings going to be facing the road not the long end, and it
716 will be fading down and most of the buildings will not be seen. Thank you.

717
718 BILL TUCKER: Number two?

719
720 JIM SMITH: Yeah, let's go on to...

721
722 BILL TUCKER: Or, do you want to take action on this one first? Or, how would you like to proceed, Mr. Chair?

723
724 NEIL DUNN: If I may Mr. Chairman just to help folks. The reason why I brought up the part about eighteen
725 (18) buildings and sixteen (16) units was first of all to verify that that was the same. Their talking about
726 density. Their way below the density they're talking about. So when we're looking at these five points of law
727 of safety and character and everything else they don't even have to be here for two hundred and eighty eight
728 (288) units to go there at this point. It's because of the overriding workforce housing that says you can't...you
729 have to make it financially viable. So it's not a comfortable spot to be in, but the way the ordinance is written
730 nothing changes. It's the same number of units. It's how they're put on the lot. If that helps anybody? I'm
731 just trying to help you folks understand what we're dealing with too, so...

732
733 DEB PAUL: One last question. I'm sorry. After what you just said, I have one last question. Deb Paul, 118
734 Hardy Road. Why? I would like you to ask the applicant why? Why workforce housing? When we're
735 changing all of our ordinances? When the town feels that it's met its requirement? Why are they still pushing
736 this when there are other opportunities for them, and it could be more well received and better for them even
737 financially? I would really, really like to know the true reason as to why they keep going after this workforce
738 housing thing? Are they getting tax breaks? Is there something beneficial about it because it isn't out of the
739 goodness of their hearts because nobody here has stood up and said yes that is what we want? As a matter of
740 fact, the Brady Sullivan properties across the street have availabilities and two (2) bedroom apartments are
741 only one thousand two hundred (\$1,200) dollars to rent, and they have no amenities. These guys have no
742 amenities. It's not like paying fourteen hundred (\$1,400) dollars is going to give you an indoor pool, or a gym
743 and a hot tub and all that fun stuff...tennis courts. So I'm having a really hard time listening to affordable
744 rentals when there are rentals in this town that are much less. The ones in south Londonderry are only nine
745 hundred and fifty (\$950) dollars for a two bedroom. So I'm having a really, really, really hard time with the
746 numbers and you know the choice that they are picking and why they are fighting so hard for this?

747
748 JIM SMITH: Do either one of you want to address that issue?

749
750 [Overlapping comments]

751
752 SAMIR KHANNA: Sure. First of all, a point of clarification. There is a club house with a pool that is proposed
753 at part of the project. So there will be amenities on the site. Second of all, we've been in Londonderry now

754 for...my Father, I believed moved in 1995. So we've been in Londonderry for a long, long time. We've never
755 had any units in Londonderry unfortunately. We're in Manchester, Hudson, Nashua, Merrimack, Bedford,
756 Epping, Dover, Hampton. Nothing in Londonderry and for years we've gotten calls about Londonderry and it's
757 embarrassing to be located in Londonderry and people think you have units in Londonderry and not have
758 anything. So we know there's a demand there. There is a demand. Specifically, workforce housing I mean it's
759 a good product. I wish there was a better product. I wish it was done a little like some other towns, but I
760 think if we're able to get these variances, it will work and that's the reason. It's not some mysterious tax
761 break, or some sort of magical wish that I'll get at the end of this. It's just for those reasons.
762

763 BILL TUCKER: Basically, believe there's enough demand in town to meet the need.
764

765 SAMIR KHANNA: There's a lot of growth in Londonderry. A lot.
766

767 JIM SMITH: Okay, are you complete?
768

769 BILL TUCKER: Done.
770

771 JIM SMITH: Okay. This is getting fun.
772

773 GEORGE YANKOPOULOS: George Yankopoulos, 49 Stonehenge Road. I do wonder about the demand, and
774 that word for demand for housing. If the inventory was done of the available rental units in this town, I'm
775 going to guess there is a lot. Look in the newspaper. It's all I did. There are tons. Where is the demand? I
776 understand we're looking at a variance in reference with the number of units per building, but again where's
777 the demand? Seen this scenario in the past in other municipalities where people say there's demand. I've
778 seen those scenarios and there is no demand, and they go advertising outside. Do need to do HUD studies,
779 case histories...we've all seen them in the past. Where's the demand? We're going to be going outside of our
780 community looking for rentals. There are plenty of apartments available in town already. Just want to
781 address the demand statement. Where's the demand? I don't get it. I don't see it. I don't hear it.
782

783 [Overlapping comments]
784

785 BILL TUCKER: We're not going to get into this debate.
786

787 JIM SMITH: Wait a minute. Wait a minute. We want to keep this in order.
788

789 BILL TUCKER: No, no, no. We are not going to get into this debate.
790

791 JIM SMITH: Okay.
792

793 BILL TUCKER: This is totally off. It's irrelevant. It is off the subject. It is not relevant to these variances at
794 issue.
795

796 GEORGE YANKOPOULOS: I'm sorry who's referring to demand?
797

798 JIM SMITH: Again, what we're really taking about is sixteen (16) versus twenty four (24).

799
800 GEORGE YANKOPOULOS: I understand.

801
802 JIM SMITH: That's all we're talking and just for everybody's clarification. If they get these variances their next
803 step is to go to the Planning Board. The Planning Board has to make a determination on whether or not to
804 issue a Conditional Use Permit for this use. That's a whole other step. The first two variances what they do is
805 modify a couple of the conditions the Planning Board has to consider in granting, or not to grant that
806 Conditional Use. This in and itself is not going to automatically say that this project is going forward. It's just
807 going to change two of the criteria for the special conditional use, and address the phasing. That's all we're
808 talking about. All the other issues about traffic, safety and all those other types of issue are Planning Board
809 issues. They have to look at...I know they can ask for a traffic study. We're not doing that. We don't have the
810 expertise to review a traffic study. That's Planning Board issues. Someone I know the other night talked
811 about lights. Again, that's a Planning Board issue. So we're just looking at just the variance at this point on
812 twenty four (24) versus sixteen (16). That's what we're talking about. Is there any other comments from
813 anybody?

814
815 Can I respond to that beyond? Thank you. George Yankopoulos, 49 Stonehenge Road. Thank you for the
816 explanation. I do appreciate that very much.

817
818 JIM SMITH: Okay.

819
820 GEORGE YANKOPOULOS: The variance here is based on the fact of a certain scenario of a building project, and
821 based on that scenario in order to make it a viable endeavor you had to have an understanding of what is your
822 sales. In this case, once again to the fact to the demand, if you're making a decision based on size and viability
823 does the demand/the sales play a part in it? I don't know? I'm not sure, but that might be a criteria that you
824 will need to consider? Is there a demand, enough of a demand, enough sales for this variance to make this a
825 twenty four (24) unit building...as a sixteen (16) unit building to make it a viable financial endeavor? Not sure
826 if that does tie in together with your decision? I just wanted to point that out. Thank you and thank you again
827 for the explanation.

828
829 NEIL DUNN: If I may make a comment?

830
831 JIM SMITH: Yup.

832
833 NEIL DUNN: We are looking for alternates for the Zoning Board.

834
835 [Laughter]

836
837 JIM SMITH: Yeah, we have one opening, I believe at this point for one more alternate. We were suffering in
838 the past trying to get any members, and we've got a few new members over the past couple of years, but it is
839 a Board that is an all-volunteer Board. It is a way to get interested in Town government, and get your voice
840 heard. I guess for a better way of saying it. Okay, having said that. Do we want to vote on this one at his
841 point?

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NEIL DUNN: I think it's cleaner.

JIM SMITH: Okay, so if there's no further input on this. We're going to close the public hearing on this case, and we're going to take it under advisement and vote on this one variance.

DELIBERATIONS:

JIM SMITH: Now one of those things. Do you have one of those fact sheets?

NEIL DUNN: No, I don't. We didn't get any in our packets?

JIM SMITH: I usually...did you give us any of those fact sheets? I had some...

NEIL DUNN: I thought we left some copies?

JIM SMITH: ...and I left them home.

[Overlapping comments]

JIM SMITH: Here's some.

[Overlapping comments]

JIM SMITH: I've got enough. Okay, what I want you to do is when we go through the facts. I want you to record the facts.

NEIL DUNN: Okay.

JIM SMITH: Okay. Let's take a look at the...what I propose we do is go down the various points and discuss them and go from there. Okay the first one is granting the variance would or would not be contrary to the public interest because...comments?

[Overlapping comments]

JIM SMITH: Okay, one of the things we have to consider is...and the spirit kind of ties into this. What is the intent of this section of this ordinance?

DAVE PAQUETTE: Ah, building size?

JIM SMITH: No, I mean the intent of the workforce housing section.

DAVE PAQUETTE: Okay.

886 JIM SMITH: Okay, if you read that lead in. It basically says it's there to encourage this type of development.
887
888 DAVE PAQUETTE: Okay.
889
890 JIM SMITH: So the public interest when you read that...
891
892 [CD 2 of 4 inserted]
893
894 DAVE PAQUETTE: ...and identified by our housing task force, so...
895
896 JIM SMITH: ...so in that case granting of this variance would encourage that?
897
898 DAVE PAQUETTE: Correct.
899
900 NEIL DUNN: Could you say that first part again please?
901
902 DAVE PAQUETTE: One of the purposes in our...sited in our LDO Section 1.1.3.5 is quote " to provide an
903 adequate housing choice and suitable living environment within the economic reach of all citizens", and the
904 inclusionary section of the LDO was specifically crafted to meet workforce housing needs required by state
905 statute and identified by our own housing task force. So that's the purpose of the workforce housing needs
906 required by state statute, and identified by our housing task force.
907
908 NEIL DUNN: Okay.
909
910 JIM SMITH: Okay, the next one. Number three granting the variance would or would not do substantial
911 justice because...?
912
913 JIM TIRABASSI: Well, it would because it would increase the stock of the workforce housing as mandated by
914 the guideline.
915
916 DAVE PAQUETTE: Would do substantial justice to the developer making this project economically feasible
917 with the variances approved.
918
919 NEIL DUNN: Well, if we...excuse me. If we look at how he put it...it was because the basis for substantial
920 justice is that the guiding rule is that the gain...
921
922 DAVE PAQUETTE: Outweighs the loss to the...
923
924 NEIL DUNN: Outweighs the...yeah. Perhaps the guides and factors loss to individuals is outweighed to the
925 gain to the general public, and were talking again, same number of units? The only thing is how they are
926 packaged to comply with the state statute for workforce housing.
927
928 JIM TIRABASSI: Is it that we're supposed to provide substantial justice for the code, or for the developer?
929 That's the difference.

930
931 JIM SMITH: Well, it's to the...
932
933 NEIL DUNN: ...and has to be outweighed to the...
934
935 JIM SMITH: ...land owner...
936
937 [Overlapping comments]
938
939 JIM TIRABASSI: Okay, to the land owner and not to the...so okay.
940
941 JIM SMITH: Substantial justice...in other words...
942
943 JIM TIRABASSI: ...well, I...
944
945 JIM SMITH: ...you're not penalizing the owner of the property because of...
946
947 JIM TIRABASSI: Right, but it's being...the variance is being granted because there's a code, so we're doing it
948 based on what the code states not what the developer...
949
950 JIM SMITH: Okay.
951
952 JIM TIRABASSI: ...the code allows that...not...
953
954 JIM SMITH: Okay, you're talking about the RSA? Yeah?
955
956 JIM TIRABASSI: Yeah.
957
958 NEIL DUNN: Well, the RSA states that the ordinance can't be...
959
960 JIM TIRABASSI: ...can't restrict him...
961
962 NEIL DUNN: ...can't put up road blocks, or make it...
963
964 JIM TIRABASSI: ...right.
965
966 NEIL DUNN: ...viably...
967
968 JIM TIRABASSI: ...right, right are we doing it...
969
970 NEIL DUNN: ...unfeasible...
971
972 JIM TIRABASSI: ...are we doing it...we're making it...
973

974 NEIL DUNN: ...and due to the...
975
976 JIM TIRABASSI: ...substantial justice due to that, not because of him, but due to that...?
977
978 NEIL DUNN: Correct.
979
980 JIM TIRABASSI: Right.
981
982 JIM SMITH: Okay, anyone want to reduce that to some words?
983
984 NEIL DUNN: Well, I basically said the spirit is observed because the purpose provides suitable housing for the
985 state statute in Londonderry...task force well...
986
987 JIM SMITH: We're talking about justice at this point.
988
989 NEIL DUNN: Correct. Oh, hold on...did I do it wrong? Substantial justice?
990 [Overlapping comments]
991
992 NEIL DUNN: I know, but they do come out pretty much the same.
993
994 JIM SMITH: Yeah, that's the trouble with some of this.
995
996 NEIL DUNN: And that's why I was reading his input...you know that the guidance...the loss to the individual is
997 outweighed by the gain to the general public.
998
999 JIM SMITH: Yeah.
000
001 NEIL DUNN: And unfortunately because we have the overriding state statute that says if you're going to have
002 that ordinance you can't...
003
004 JIM SMITH: Make it unduly restrictive...
005
006 NEIL DUNN: ...make it unduly restrictive and there's some concern about you know the sizing. We could go
007 four (4) stories, so he's not in really any violation there, so the limit to the sixteen (16) versus the twenty four
008 (24) is poorly substantiated, and so there is substantial justice. He could go four (4) stories, and...
009
010 JIM SMITH: ...yeah, four, four, four...
011
012 NEIL DUNN: ...make nice tall little buildings, I guess?
013
014 JIM SMITH: ..which would be kind of weird looking?
015
016 NEIL DUNN: It wouldn't be financial viable and that's where the workforce...
017

018 JIM SMITH: Yeah.
019
020 NEIL DUNN: ...overrides and lays on top of it.
021
022 JIM SMITH: Yeah.
023
024 NEIL DUNN: So the...in his argument there's more green space. He's still within the height restrictions, so I
025 guess the way I would write it is...substantial justice is done because of...we would be satisfying state statute
026 and...
027
028 DAVE PAQUETTE: They'll be no loss to the general public.
029
030 NEIL DUNN: And no loss to the general public that's outweighed by the gain.
031
032 JIM SMITH: Yeah.
033
034 DAVE PAQUETTE: His first line in his second paragraph permitting twenty four (24) units as opposed to the
035 required sixteen (16) will result in no loss to the general public.
036
037 JIM SMITH: Okay, you all set?
038
039 NEIL DUNN: I'm just had one more thing.
040
041 JIM SMITH: Okay, next one. The following reasons...the values of the surrounding properties would or would
042 not be diminished? And the applicant, he submitted letters from a couple of different real estate people
043 giving their conclusion that it wouldn't have any...no negative impact on surrounding properties. It's always
044 difficult because people in the neighborhood could have opinions on what may or may not happen, but
045 there's no significant...why don't we just say...
046
047 NEIL DUNN: Difference between eighteen (18) buildings or twelve (12) buildings and what's happening...
048
049 JIM SMITH: Yeah.
050
051 NEIL DUNN: I mean that's really our measuring stick. There's going to be two...there could be two hundred
052 and eighty eight (288) units without coming to us on this...
053
054 JIM TIRABASSI: Without, right, right.
055
056 NEIL DUNN: ...so what's the difference? Is there?
057
058 JIM TIRABASSI: The economic impact...
059
060 NEIL DUNN: Is there an impact no...?
061

062 JIM TIRABASSI: Right, right.
063
064 NEIL DUNN: Is there an impact on the property values by making them twenty four (24) unit buildings...
065
066 JIM TIRABASSI: Three stories as opposed to height...?
067
068 NEIL DUNN: ...sixteen (16)...
069
070 JIM TIRABASSI: Right, basically by the height of the building. Not the number of units.
071
072 JIM SMITH: But again, the height is within the limits.
073
074 JIM TIRABASSI: Right, but that doesn't mean it doesn't depreciate the value of the surrounding properties?
075
076 JIM SMITH: But then you have to look at the distance and the screening of them?
077
078 JIM TIRABASSI: It's still...part of the overall view is still an abutting...basically an abutting property to the other
079 properties on Hardy and Stonehenge. I mean it could be set back a thousand (1,000) feet, but it's still a known
080 entity there. And the factor of what is...and the other properties...it's almost like the broken window concept.
081 You know just because something is there you don't continue doing bad. It'll eventually just expand the bad.
082
083 JIM SMITH: Well again you're reducing the impact by going from eighteen (18) buildings to...what is it?
084
085 JIM TIRABASSI: Twelve.
086
087 [Overlapping comments]
088
089 JIM SMITH: Twelve (12) buildings.
090
091 JIM TIRABASSI: You're decreasing the footprint of it overall. The overall...
092
093 JIM SMITH: Yeah.
094
095 JIM TIRABASSI: The overall...
096
097 JIM SMITH: Yeah.
098
099 DAVE PAQUETTE: Is a green...
100
101 [Overlapping comments]
102
103 DAVE PAQUETTE: ...space consideration there right?
104
105 [Overlapping comments]

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JIM TIRABASSI: But going from two stories to three stories gives it a whole different perspective to the abutting neighbors.

NEIL DUNN: So I guess in your view would that impact it? As opposed to...?

JIM TIRABASSI: In my view, it would impact it, yes. The other parts all fit in with...but this is an outside thing. This is the economic impact on the neighborhood.

NEIL DUNN: So if he wanted to put twelve (12) foot ceilings in do...no, I'm just...

JIM TIRABASSI: No, no, no. I know what you are saying.

[Overlapping comments]

NEIL DUNN: The trouble is...I do it all too often. I do it all the time you get wrapped up and you lose perspective. If it's sixteen (16) versus twenty...there's going to be two hundred and eighty eight (288) units. They wouldn't have to be here.

JIM TIRABASSI: Right.

NEIL DUNN: They could go four stories and make them these tall skinny buildings.

JIM TIRABASSI: Right.

NEIL DUNN: So...

JIM TIRABASSI: Right.

NEIL DUNN: So...does this impact anything that's within what's allowable? And the difference between what the variance is for...yes, going three stories, but it's still within the height limit that would be allowable.

JIM TIRABASSI: It's within the allowable height...

NEIL DUNN: It's a bigger building with more open space, so I...to me, you take the letters, and I don't know to me maybe the green space...

JIM TIRABASSI: Right.

NEIL DUNN: ...is less in your fact then, you know, a bunch of one (1) story less and more buildings?

JIM TIRABASSI: Right.

NEIL DUNN: I guess...and again, I'm not trying to sway you, I'm just trying to...

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[Overlapping comments]

JIM TIRABASSI: Right, right, I know...

NEIL DUNN: ...help decide myself...

[Overlapping comments]

JIM TIRABASSI: No, no, no. I understand...

[Overlapping comments]

JIM SMITH: It's an open discussion.

[Overlapping comments]

JIM SMITH: Supposed to be. We're supposed to give and take on this.

[Overlapping comments]

JIM TIRABASSI: I mean in a residential building. I pretty much don't assume anybody's going to do a twelve (12) foot ceiling because they are trying...they're doing this to reduce the cost of their structure. So they aren't going to go adding on to the individual cost per unit.

NEIL DUNN: No, absolutely...

JIM TIRABASSI: Right.

NEIL DUNN: ...but it gets...

JIM TIRABASSI: Right, I know what you're saying. So it could be a twenty four (24) foot story building. Twenty four (24) foot tall being three (3) levels, or two (2) levels...that's either way, but the point is just from the observable part it you see it's a three (3) level just by the layer of windows.

NEIL DUNN: Oh, absolutely.

JIM TIRABASSI: Right, so and like I said, in my belief...strictly my belief is anytime I see that in a neighborhood, I tend to see the value of the properties depreciating, and that has the economic impact on the abutting properties. I know the deal is...you know there's no decrease in the value of the property until you go to sell it. Well these people bought it an asset.

NEIL DUNN: Oh, absolutely viable statements, I guess.

194 JIM TIRABASSI: Right.
195
196 NEIL DUNN: That's where I say does that open green space...
197
198 JIM TIRABASSI: Right.
199
200 [Overlapping comments]
201
202 NEIL DUNN: ...balance it.
203
204 DAVE PAQUETTE: To your comment. There's already multi-family housing...
205
206 JIM SMITH: Multi-unit in the area.
207
208 DAVE PAQUETTE: ...in the vicinity.
209
210 JIM TIRABASSI: Right, that's what I said doing bad doesn't mean you do more bad.
211
212 DAVE PAQUETTE: Understood.
213
214 JIM SMITH: Yeah, but it's an allowable use?
215
216 JIM TIRABASSI: It's an allowable use, but we're not...I'm not denying it's not an allowable use. What I'm
217 saying is we're now talking about the economic...the value of the surrounding properties. Would it affect it?
218 Yes, because it's an allowable use doesn't mean it wouldn't affect the value of the surrounding properties.
219 They're not necessarily synched together.
220
221 NEIL DUNN: So if they went in there and did eighteen (18) units...sixteen...excuse me eighteen (18)
222 buildings/sixteen (16) units each...
223
224 JIM TIRABASSI: Then I wouldn't have that much of a problem. I wouldn't be...
225
226 NEIL DUNN: ...it's the height?
227
228 JIM TIRABASSI: ...it's the height, yes. It's the number of units stacked. It's the height of it.
229
230 DAVE PAQUETTE: You think the number of floors has more of an impact to...
231
232 JIM TIRABASSI: That's what I'm talking about.
233
234 DAVE PAQUETTE: ...surrounding property values then...
235
236 JIM TIRABASSI: A negative impact.
237

238 DAVE PAQUETTE: ...two floor buildings do?
239
240 JIM TIRABASSI: Negative.
241
242 JIM SMITH: What do...
243
244 DAVE PAQUETTE: I'm not grasping that at all...you're...
245
246 JIM TIRABASSI: You're...having studied Greek real estate over a number of years.
247
248 JIM SMITH: Okay, okay, I'm just trying to get a...
249
250 JIM TIRABASSI: Yeah, yeah.
251
252 JIM SMITH: ... where you're coming from.
253
254 [Overlapping comments]
255
256 JIM SMITH: Bill?
257
258 BILL BERNADINO: I agree with Jim about it because [Inaudible].
259
260 DAVE PAQUETTE: Our sample, or suggestion from the attorney stated that there's already multi-family
261 housing in that area, so...
262
263 NEIL DUNN: That is three (3) stories.
264
265 DAVE PAQUETTE: That yeah...that is...yeah...
266
267 [Overlapping comments]
268
269 JIM TIRABASSI: Right. No, I don't agree...I...
270
271 NEIL DUNN: There's a broken window there.
272
273 [Overlapping comments]
274
275 JIM TIRABASSI: ...Right, I don't disagree with what's already there, but as I said, you don't get to do bad, and
276 that's the thing if something's torn down. If you have a hovel, you don't create another hovel.
277
278 DAVE PAQUETTE: I don't disagree with you, but we're ah...
279
280 NEIL DUNN: So let's get back to the applicant's.
281

282 DAVE PAQUETTE: Yeah.
283
284 NEIL DUNN: The value of the properties will not be diminished letters from Valentine and the Group and M of
285 Verani have been submitted both with concluders no negative impact. The closest building to Hardy Road is
286 more than one thousand (1,000) feet from properties, and with twenty four (24) units per building that means
287 the closest building to Hardy will be even further away. So it gets back to how do you perceive height and
288 where do...I see the open space and with the dropping slope maybe. I think the apartments all in there
289 definitely impact it in general. However...
290
291 JIM TIRABASSI: Yeah, right.
292
293 NEIL DUNN: ...the difference between...
294
295 JIM TIRABASSI: ...right...
296
297 NEIL DUNN: I don't personally see a big difference...
298
299 JIM TIRABASSI: ...right...you know, I...
300
301 NEIL DUNN: ...in it, but that's just my point.
302
303 JIM TIRABASSI: ...right...right...
304
305 NEIL DUNN: ...but that's my point...my perspective.
306
307 DAVE PAQUETTE: Okay. So what are our findings of fact from this particular line? So the findings of fact are
308 we have letters from two reputable real estate agents from the area with letters stating that they'll be no
309 negative impact on surrounding property values.
310
311 JIM TIRABASSI: Right, but...I mean, my opinion is still my opinion, but they're not going to incorporate letters
312 in there that say it would economically impact...
313
314 DAVE PAQUETTE: Sure.
315
316 [Overlapping comments]
317
318 JIM TIRABASSI: The letters are just about upper value so far.
319
320 [Overlapping comments]
321
322 DAVE PAQUETTE: As far as findings of facts go towards though...
323
324 [Overlapping comments]
325

326 JIM TIRABASSI: Right, right, right. Oh, no I'm just saying...
327
328 DAVE PAQUETTE: There's also other multi-family in...
329
330 JIM SMITH: I think the biggest thing there are in fact this type buildings in that area, so we aren't dramatically
331 changing what's in that particular area by the inclusion of these types of buildings.
332
333 NEIL DUNN: I don't know if I agree with that because I think we are changing; however, compared to what
334 would be allowed without it coming here...
335
336 DAVE PAQUETTE: Yeah, the...
337
338 NEIL DUNN: ...I think we'd have to say...so to me I don't think it's going to diminish more than this project no
339 even having to come here with it. I guess is my point so...and that's what we're supposed to be ruling on
340 sixteen (16) versus twenty four (24).
341
342 [Overlapping comments]
343
344 NEIL DUNN: Otherwise we aren't there. So yeah I don't know how we...the buildings across the street they
345 are multi-family, but they're less units, and although some people don't like to measure by units...
346
347 JIM TIRABASSI: Right.
348
349 NEIL DUNN: ...or they're going to be much smaller buildings I think than these are proposed.
350
351 JIM SMITH: I think one of the other things that is unusual trying to limit size of buildings by the number of
352 units. That seems to be a...
353
354 [Overlapping comments]
355
356 JIM SMITH: ...unusual way to try to limit buildings?
357
358 TIM TIRABASSI: I'm not trying to limit the number of units. I'm trying to limit it by the height of the unit.
359
360 DAVE PAQUETTE: Which is within...
361
362 JIM SMITH: But the height is within...
363
364 DAVE PAQUETTE: ...the ordinance.
365
366 TIM TIRABASSI: Right, oh I understand that but...
367
368 JIM SMITH: so we're not asking for a variance on height only on the number of units.
369

370 [Overlapping comments]
371
372 JIM TIRABASSI: Right, but the number of units reflected in the height of the building...in the number of
373 stories...
374
375 JIM SMITH: Could.
376
377 JIM TIRABASSI: ...the number of windows and the economic value of the abutting property. I mean like I said
378 that's my belief.
379
380 JIM SMITH: Okay, we have two versus three on this one.
381
382 NEIL DUNN: So the findings that we put in there is discussion on it?
383
384 JIM SMITH: Right.
385
386 NEIL DUNN: I think it's fair to get a note that if it...
387
388 JIM SMITH: Yeah, yeah.
389
390 DAVE PAQUETTE: So this kind of just a preliminary...
391
392 JIM SMITH: Well, it's to give some sort of background...
393
394 [Overlapping comments]
395
396 NEIL DUNN: What our discussions went and what the thought was because what happens is...
397
398 DAVE PAQUETTE: You kind of loose yourself.
399
400 JIM SMITH: So if this was appealed to the court...
401
402 [Overlapping comments]
403
404 JIM SMITH: Yup.
405
406 NEIL DUNN: That you know, a few people brought it up a few people didn't think, so it's really the vote that
407 counts.
408
409 [Overlapping comments]
410
411 JIM SMITH: Okay.
412
413 NEIL DUNN: Wait a minute...trying to read my writing.

414
415 JIM SMITH: Okay, the next point. Owing to special conditions of the property that distinguish it from other
416 properties in the area denial of the variance would result in unnecessary hardship because, and there's two
417 parts to this - A1 and A2, or you could go to Part B. Okay, under A1 there is or is not a fair and substantial
418 relationship between the general purpose of the ordinance provision and a specific application of that
419 provision to the property because, and A2 is the proposed use is or is not a reasonable one because. Since we
420 aren't really arguing about uses A2 doesn't seem to really fit. When you go to Part B if the criteria in
421 Subparagraph B is not established as an unnecessary hardship we will be deemed to accept if, and only if
422 owning a special conditional property that distinguishes it from other properties in the area the property can
423 or cannot properly be in strict conformance with the ordinance and a variance is therefore necessary to
424 enable a reasonable use of it.

425
426 DAVE PAQUETTE: I don't think that this particular one fits that one. I...

427
428 JIM SMITH: Part of our problem with this section is that we have the overriding workforce housing criteria,
429 which basically says that if we have...don't have an economically viable way of conforming...

430
431 DAVE PAQUETTE: That the town ordinance of sixteen (16) units...it's a hardship against the economic
432 feasibility...

433
434 JIM SMITH: Right.

435
436 DAVE PAQUETTE: ...of workforce housing projects. The restriction of sixteen (16) units per building make the
437 development of a workforce housing projects economically infeasible.

438
439 JIM SMITH: Any other comments?

440
441 NEIL DUNN: And we're going that as far as 5A?

442
443 DAVE PAQUETTE: Yeah, 5A 1.

444
445 NEIL DUNN: Correct, and the use is a reasonable one because multi-family is allowed.

446
447 DAVE PAQUETTE: It meets the requirements for state housing statute for the purpose of our inclusionary
448 workforce housing provisions...

449
450 NEIL DUNN: Say that again, no that's good.

451
452 DAVE PAQUETTE: It meets the requirement of a state housing statute and the purpose of our inclusionary
453 housing provisions.

454
455 [Overlapping comments]

456
457 JIM SMITH: Okay, having gone through that exercise, I will entertain a motion.

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[Overlapping comments]

NEIL DUNN: Mr. Chairman, I'd like to make a motion to accept case 11/19/2014-4 based on the facts...

JIM SMITH: Grant, or...?

NEIL DUNN: Grant. Mr. Chairman, I'd like to make a motion to grant case 11/19/2014-4 based on the fact that the granting of the variance would not be contrary to the public interest as the workforce housing state statute and town inclusionary statute essentially state that is the public interest is for workforce housing. Two, that the spirit of the ordinance is observed as proposed do to 1.1.3.5 provides suitable housing per state statute in Londonderry housing task force. Three, compliant with the granting the variance would do substantial justice because compliance with the states workforce housing statutes and there's no loss of general public that is providing greater opportunity to the applicant. It provides realistic opportunities for workforce housing that the values of the properties although there's some discussion about that in essence the difference in sixteen (16) units versus twenty four (24)...you know there's concern that maybe it would impact? But, we also believe the open green space may not impact as much, so I don't know what to say about that other than that's my motion is I don't think it's going to impact it. There is not a fair and substantial relationship between a general public interest of the ordinance and the specific application of the provision do to the relationship the viability of workforce housing with sixteen (16) units versus twenty four (24) is not reasonable, and B that the proposed use is a reasonable one multi-family housing is permitted in this area, and the requirements of state workforce housing statute and Londonderry inclusionary housing are met.

JIM SMITH: Do I have a second?

JIM TIRABASSI: I second it.

JIM SMITH: Okay, all those in favor?

JIM SMITH: Aye.

NEIL DUNN: Aye.

DAVE PAQUETTE: Aye.

JIM SMITH: All opposed?

JIM TIRABASSI: Aye.

BILL BERNADINO: Aye.

JIM SMITH: Okay, a 3-2 vote.

502 RESULTS: CASE NO. 11/19/2014-4: THE MOTION TO GRANT CASE NO. 11/19/2014-4 WAS APPROVED, 3-2-0.

503
504 RESPECTFULLY SUBMITTED,

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506

507
508 DAVE PAQUETTE, CLERK

509
510 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
511 SECRETARY

512
513 **APPROVED APRIL 15, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND
514 APPROVED, 5-0-0.