

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

DATE: MARCH 18, 2015

CASE NO.: 11/19/2014-5 (REHEARING)
(WITH REFERENCE TO CASE NOS. 11/19/2014-4 & 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 BERARDINO, 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 from the others after Bill Tucker spoke to his
Exhibits P and Q.

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

47

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

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50 JIM SMITH: I presume they are?

51

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

54

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

59

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

61

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

63

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

70

71 JIM SMITH: Yeah, okay? Is it on this?

72

73 [Overlapping comments]

74

75 JIM SMITH: Where do I look?

76

77 [Overlapping comments]

78

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

80

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

87

88 JIM SMITH: Okay.

89

90 BILL TUCKER: What we are dealing with here is not a use variance. The use that we are asking for is a
91 permitted use on this property, and we are doing no more, or no less. Actually, a lot less than what's
92 permitted because the density we're planning to put on is only forty six (46) percent of what would be
93 permitted, but it is a permitted use. The three variances going from sixteen (16) to twenty four building per

94 unit; going from seventy five (75) percent to fifty (50) percent of workforce units, and asking for the
95 construction to be phased over three (3) years as opposed to six (6). Are provisions that restrict and hamper
96 the economic ability of the developer to do this project, and the three restrictions conflict with two things.
97 They conflict with the purpose of the zoning ordinances inclusionary housing provision which purposes is, and
98 I'll quote here for the record *"To encourage and provide for the development of workforce housing within
99 Londonderry...to insure the continued availability of a diverse supply of home ownership and rental
100 opportunities meeting the definition established in the State of NH's Workforce Housing statutes ..."*. Those
101 statutes provide that *"In every municipality that exercises the power to adopt land use ordinances and
102 regulations, such Ordinances and regulations shall provide reasonable and realistic opportunities for the
103 development of workforce housing, including"*, and I emphasize here...*"rental multifamily housing."* It's not
104 just single family it's multi-family, and the statutes defines reasonable and realistic opportunities as
105 *"Reasonable and realistic opportunities for the development of workforce housing' means opportunities to
106 develop economically viable workforce housing within the framework of a municipality's Ordinances and
107 Regulations adopted pursuant to this Chapter and consistent with RSA 672..."*. So the key there is economically
108 viable workforce housing, and we have submitted reports by Russ Thibeault. I believe those have now been
109 reviewed by the Town's consultant, and have been verified. We believe, and it's very clear that those reports
110 show that these three ordinance provisions make the property development, as we proposed it, economically
111 impossible. Therefore, we believe that these variances need to be granted. This is a setting where these two
112 provisions of the state statute, and the provision of your ordinance act as an umbrella, or a canopy that has to
113 go over the five criteria. It's sort of an overriding criteria. It sets the framework for which everything must be
114 looked at. The only comparable thing that I can think of is the Telecommunications Act that provides that
115 every town must make available locations for cell towers. I don't know if any of you were on this Board when
116 the Daniel's case was before it, but your Board granted variances for a cell tower. That was appealed and the
117 courts said that that has to be taken into consideration. It has to be an umbrella in which you view everything.
118 So given that background, I want to go over the criteria of the three variances, but...

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

122
123 BILL TUCKER: Yes, your decision was appealed. It went to the state Supreme Court.

124
125 NEIL DUNN: I don't recall losing, I don't...?

126
127 BILL TUCKER: No, you won.

128
129 NEIL DUNN: Right, okay...

130
131 [Overlapping comments]

132
133 NEIL DUNN: ...I wasn't clear what your point was there, so I was...

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

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

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[Laughter]

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 background 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.

[The discussion proceeded regarding Case No. 11/19/2014-4; see separate minutes. The following is a transcription of the discussion regarding Case No. 11/19/2015-5 only].

JIM SMITH: We're moving on to the second variance.

BILL TUCKER: Okay, we are now on to the variance requesting a fifty (50) percent workforce housing requirement as opposed to the seventy five (75). With respect with this variance not being contrary to the public interest and within the spirit of the ordinance, we believe this is the case. We have to again look at the

182 declaration of public interest as set forth in the ordinance, and again just so we can have it in front of us, I
183 want to read the purpose of the inclusionary housing provisions in your ordinance the purpose of this section
184 is to encourage and promote the development of workforce housing within Londonderry. It is intended to
185 ensure the continued availability of a diverse supply of home ownership and rental opportunities for persons
186 meeting the definition established in the state statutes. The requirement that a workforce housing project of
187 seventy five (75) percent of its units available at reduced rentals is a provision of the ordinance which in effect
188 defeats the purpose of the ordinance. The standard is so high that it doesn't allow enough regular income
189 units to subsidize the workforce units and to make the project viable. Looking at the two factors the courts
190 has said we need to the essential character of the neighborhood. The character of the neighborhood will not
191 be altered by reducing the units from seventy five (75) percent to fifty (50) percent because the neighborhood
192 is not affected in any way. There is no change in the layout of the buildings on the site. No change on the
193 physical features of the property of the buildings. Again, we have the letters from the Verani group and
194 Valentine that the character of the neighborhood as a whole won't be changed. And the fifty (50) percent
195 versus seventy five (75) percent only relates to the rentals that can be charged. No impact on the
196 neighborhood. Public health, safety and welfare again will not be threatened because what we're doing here
197 is we are only changing the rentals and that will not alter or change in any respect. We are only looking at
198 income levels of people and that doesn't have an impact on health, safety and welfare. Mr. Fougere's report
199 indicates that we have adequate facilities in this town to support this project, and weather there's workforce
200 of seventy five (75) percent or workforce fifty (50) percent will not have an impact on the amount of those
201 utilities that are used. With respect to substantial justice denying the variance will not provide a benefit that
202 will be outweighed by the loss to the applicant here. The granting of the variance will result in a benefit to
203 both the applicant and the public since it will increase the economic viability of the project and allow a
204 workforce housing project to go forwarded therefore satisfying the State of New Hampshire that the town
205 provide reasonable and realistic opportunities for workforce housing, and also by satisfying the purpose of the
206 Londonderry inclusionary housing provisions which are in its ordinance. Mr. Thibeault's report clearly
207 indicates that the project for the seventy five (75) percent workforce housing component is not economically
208 viable as the net operating income is reduced by three hundred ninety thousand (\$390,000) dollars per year
209 when compared with the fifty (50) percent that we're asking for and that reduction results in there not being
210 enough income from the property to cover the debt service. The project is clearly not viable. With respect to
211 surrounding property values, again, the fact that we're going from seventy five (75) percent to fifty (50)
212 percent will not affect surrounding property values. The project is the same project. It's just the income level
213 of the people living in those units. Again, we have the letters that have been submitted by Verani and
214 Valentine that indicate that the project as a whole won't reduce property values. With respect to the
215 unnecessary hardship test we believe this is met as there is no fair and substantial relationship between the
216 general purposes of the ordinances and specific application to the property and the proposed used is as
217 reasonable one. The property is ideally suited for this project since this site has been identified by the task
218 force as suitable for workforce housing. All necessary infrastructures are available as indicated by Mr.
219 Fougere's report. Again, we are only forty six (46) percent of the maximum density. In addition, and most
220 importantly the seventy five (75) workforce housing requirement makes the project economically unfeasible
221 as clearly indicated by Mr. Thibeault's report and is verified by the town's consultants. The report clearly
222 demonstrates that the project does not work at seventy five (75) percent, but by the granting of this variance,
223 along with the other two make the project economically viable but barely so. The requirement of the fifty (50)
224 percent workforce housing as opposed to seventy five (75) generates additional three hundred ninety
225 thousand in debt service. Income to service debt, and with this additional income the project and become

226 viable. Based upon the stated purpose of the Londonderry inclusionary housing provisions which is to
227 encourage and provide the development of workforce housing in Londonderry. The requirement of the
228 seventy five (75) percent workforce component creates a roadblock to the development of workforce housing.
229 As indicated in Mr. Fougere's report and his supplement report most towns in southern New Hampshire have
230 a twenty three (23) to thirty three (33) workforce housing component in their affordable housing projects.
231 Just to give you a few of those towns Auburn is twenty (20) percent, Bedford is thirty three (33), Brookline is
232 fifty (50), Fitzwilliam is thirty (30) percent, Hollis is thirty (30) percent, Wolfboro twenty (20) percent,
233 Barrington twenty (20) percent, Brentwood forty (40), Canterbury twenty (20), Kensington twenty (20),
234 Loudon thirty three (33), Rye is fifty (50), Salem is thirty (30), Stratham is twenty five (25), Warner is thirty
235 (30). No one goes above fifty (50). In addition, we submit the criteria be as established because the property
236 cannot be reasonably used in conformance with the ordinance. Again, we have the fact of the income and the
237 income that will be additionally generated by reducing the workforce component which will allow enough
238 regular rents to subsidize the project and to make it...as we've said barely economically feasible, but feasible.
239 We have sufficient utilities here. The property again has been identified for the task force, and as Mr.
240 Thibeault's analysis again demonstrates the variances necessary in order for a reasonable use of this property
241 as a workforce housing project. That is our submission. We think we meet all five criteria.

242
243 JIM SMITH: Questions from the Board?
244

245 JIM TIRABASSI: I'm sitting here and I'm listening to you and I'm looking at the codes. I was paying attention. I
246 wasn't ignoring you. I wanted to look at some of the stuff as well. It I don't know...it's more probably just a
247 thought process I have, but I'm hearing that you know this project has to go through because it's mandatory
248 we create a workforce housing. It's absolutely mandatory. There's no option but to create this piece. The city
249 says this is a percentage you have to make workforce housing, and you people come in and you people come
250 in and say, but it's not viable for us to follow your guidelines. Let me ask you a simple question, so appease
251 me. If this company...I have nothing against your company, so please don't...it's not a personal...or anything.
252 If you were to go and try to build that as two hundred and eighty eight (288) units just residential apartment
253 buildings would you be able to do that? I'm just asking, I mean...would you...do the guidelines in the planning
254 allow for you to just build two hundred and eighty eight (288) unit apartment building?
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256 SAMIR KHANNA: Just...
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258 JIM TIRABASSI: If it wasn't workforce housing...
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260 SAMIR KHANNA: Market rate?
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262 JIM TIRABASSI: Yes, just market rate places?
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264 SAMIR KHANNA: Yes, is that what you are asking?
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266 JIM TIRABASSI: Yes, I mean you could just go in there and just build two hundred and eighty eight (288)...
267

268 [Overlapping comments]
269

270 SAMIR KHANNA: Wait...two hundred and eighty eight market...
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272 JIM TIRABASSI: How many units are going to be in there? I'm sorry...
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274 BILL TUCKER: Two hundred eighty eight units.
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276 JIM TIRABASSI: Right.
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278 SAMIR KHANNA: So zero percent affordable housing?
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280 JIM TIRABASSI: Yes, zero percent just market rate housing.
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282 BILL TUCKER: I don't know.
283
284 [Overlapping comments/Laughter]
285
286 SAMIR KHANNA: Yes, that would make it even more viable.
287
288 [Overlapping comments]
289
290 BILL TUCKER: The question is can we do that under the zoning...?
291
292 SAMIR KHANNA: It's not allowed per the zoning. If you're just asking me...?
293
294 JIM TIRABASSI: I'm asking you...no I'm not asking you as a contractor, I'm asking you based on the zoning. You
295 couldn't do that based on the zoning?
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297 SAMIR KHANNA: No.
298
299 JIM TIRABASSI: Okay, so part of my question has been appeased to myself. The thing is...this is my...
300
301 SAMIR KHANNA: You have to abide by the housing...
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303 JIM TIRABASSI: I understand, like I said...
304
305 [Overlapping comments]
306
307 JIM TIRABASSI: ...the part is we're coming in and saying...these are the requirements, we're going to do this,
308 and the reason is because the property is there. We can't do it as a commercial property, so we're going to
309 come in under the guides of the workforce housing and we're going to whittle down the percentage that's
310 required by the zoning and do a lesser thing even though we're saying the demand is there for the workforce
311 housing.
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313 SAMIR KHANNA: So this property was identified as ideal for workforce housing.

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JIM TIRABASSI: I understand that.

SAMIR KHANNA: Market rate housing is not an option.

JIM TIRABASSI: Excuse me, I'm sorry...?

SAMIR KHANNA: Market...if you're saying market rate...

JIM TIRABASSI: No, no, no. That's fine, okay. I just want to make...yeah, no I understand...and I'm just...

SAMIR KHANNA: Okay.

JIM TIRABASSI: ...I was just trying to understand something and I understand now. That's all.

SAMIR KHANNA: Yeah.

JIM TIRABASSI: Not a problem.

[Overlapping comments]

JIM SMITH: Question for those...is this zoned what R-III, or what?

SAMIR KHANNA: AR-1.

[Overlapping comments]

JIM SMITH: What would be the...could you build any other type of apartment buildings in that zone.

RICHARD CANUEL: Oh yeah. They could build single family homes. They could build duplexes. They could build multi-family...

JIM SMITH: Okay. On the multi-family what would be the density in that?

RICHARD CANUEL: Density, I don't know just for that particular zone. I mean their allowed up to ten (10) units per acre under the workforce housing.

JIM SMITH: I know that.

RICHARD CANUEL: Give me just a moment. I'll get that for you.

JIM SMITH: I want to see a comparison.

357 RICHARD CANUEL: Yeah, right. Give me just a moment. You can go on and talk amongst yourselves, if you'd
358 like.
359
360 [Laughter]
361
362 BILL TUCKER: Let me try to answer one, or respond to one statement. [Overlapping comment]. The state
363 statute doesn't mandate that every workforce housing project be approved.
364
365 JIM TIRABASSI: I understand that.
366
367 BILL TUCKER: Okay.
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369 JIM TIRABASSI: This cities does...
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371 BILL TUCKER: I thought you might have said that...
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373 JIM SMITH: No, no, no, no, no.
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375 JIM TIRABASSI: No, I'm just saying. It mandates that each city provide it, but what we're doing is we come in
376 and the city based on their desires, needs, wants is setting a percentage, and the developers come in and try
377 to craft that down saying for us to provide this thing. This goes to the heart of one of the other women
378 asked...was the demand. If the demand is so intent for the workforce housing we're letting every developer
379 whittle down that from that supposed demand.
380
381 BILL TUCKER: You know all I can ask...it's an interesting question. I don't have the answer to is how the town
382 ever got to the seventy five (75) percent where that...the origin of that because...?
383
384 JIM TIRABASSI: I...I have no idea?
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386 BILL TUCKER: ...nobody comes close to it that's...
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388 JIM TIRABASSI: Well...
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390 BILL TUCKER: ...the interesting thought.
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394 JIM TIRABASSI: ...regardless of what other cities... I mean this is because maybe they said we need to do this
395 and based on the amount of property we have...
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397 BILL TUCKER: Yeah.
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399 JIM TIRABASSI: ...that's targeted as it. We have to come to this percentage to make it a viable alternative, but
400 if we keep whittling it down we're going to keep having this same thing location after location because the

401 actual number has to be there, but if whittling down out of each development that number is taking longer to
402 get to.

403
404 BILL TUCKER: I mean, I can dare say that you'll never be able to build an affordable housing project in the
405 town with a seventy five (75) affordable units because there's just not enough income when you've got to
406 have those rents, and you don't have enough higher rents to...

407
408 JIM TIRABASSI: Well, how many properties could you put on that site all together? Have you...is this the
409 maximum?

410
411 BILL TUCKER: Oh, no...

412
413 JIM TIRABASSI: No. So you could do it?

414
415 [Overlapping comments]

416
417 BILL TUCKER: ...but the percentage would still...it's the percentage that is critical.

418
419 SAMIR KHANNA: You could build as many units as you want, but if you still have to make twenty five (25)
420 percent market and seventy five (75) percent affordable you're just building more units that are not
421 economically viable.

422
423 JIM TIRABASSI: If you creep your percentage up from fifty (50) closer to seventy five (75) as you build more
424 units?

425
426 BILL TUCKER: No.

427
428 SAMIR KHANNA: No.

429
430 BILL TUCKER: No. Absolutely not. The ratio of income...

431
432 [Overlapping comments]

433
434 BILL TUCKER: ...going to be the same.

435
436 JIM TIRABASSI: No, it's not going to quite work out the same because your development costs decreases as
437 you go to multiple units. I trust...I accept your word...

438
439 SAMIR KHANNA: This is...we're talking about the income.

440
441 JIM TIRABASSI: Right.

442
443 SAMIR KHANNA: Yeah, so the income regardless...

445 JIM TIRABASSI: Right.
446
447 SAMIR KHANNA: ...of units...if you're deriving seventy five (75) percent from affordable rate versus fifty (50)
448 the economic viability doesn't get better as you increase units.
449
450 JIM TIRABASSI: In a way it does, but I understand what you're saying. I have no problem with what you're
451 saying.
452
453 SAMIR KHANNA: Oh, okay.
454
455 JIM TIRABASSI: It's not a matter of...I mean I've done the same types of stuff so...it's not a matter, I
456 understand. He's a lawyer. I accept your...
457
458 [Overlapping comments/Laughter]
459
460 RICHARD CANUEL: Yeah, it's a little different with just straight forward multi-family development because it's
461 based on a formula not knowing the particulars of the property the formula goes pretty much eighty (80)
462 percent of the useable land area at seven thousand (7,000) square feet of area per unit. So you sort of kind of
463 do it backwards to get the total number of units that you could actually allow on that piece of property based
464 on the useable area.
465
466 JIM SMITH: So you'd have to do basically a...
467
468 DAVE PAQUETTE: Seven thousand (7,000) square feet...
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470 RICHARD CANUEL: Exclude all of your slopes, exclude all the wetlands...
471
472 JIM SMITH: Right.
473
474 RICHARD CANUEL: ...and so forth. It's eighty (80) percent of the useable area and then it's a minimum of
475 seven thousand (7,000) square feet per dwelling.
476
477 JIM SMITH: So it's not easily determined?
478
479 RICHARD CANUEL: No. Well without knowing the particulars of the property it's not easy to determine here.
480
481 JIM SMITH: Again, in the workforce housing they took a very simplistic approach and said simply ten (10) units
482 per acre, and they didn't put the restrictions about being usable land or anything like that so...you can't easily
483 determine how many units of commercial typical apartment building could be built there.
484
485 RICHARD CANUEL: Simply because the intent of the workforce housing provisions of the ordinances to allow a
486 higher density.
487

488 JIM SMITH: Okay, any other questions from the Board? Okay. Anyone in support? Anyone who has either
489 further questions, or comments? Yes, ma'am.

490
491 PAULINE CARON: Sorry, I'm slow. I've been sitting too long. I have a question. If the percentage remains at
492 seventy five (75) percent...there's a three hundred and ninety thousand (\$390,000) dollar a year reduction in
493 income. If it's down to fifty (50) percent you don't lose that money, but the workforce housing units are
494 renting for fourteen hundred (\$1,400) dollars a month, so I presume the other ones are renting for more? I
495 don't know what the amount it, but with all of the units that are available in town for less than fourteen
496 hundred (\$1,400) dollars what happens if they don't rent the units that they make money on? What happens
497 to the project? They're still going to lose money? That's my question.

498
499 JIM SMITH: Anyone else with comments?

500
501 DEB PAUL: I have a lot of things to say. Deb Paul, 118 Hardy Road. You know we were asked to come here as
502 residents and put our input in. We brought in two real estate agents two meetings past that said the contrary
503 to what those guys are saying. One, was David Nease from Berkshire Verani and the other was Valerie
504 [indistinct] from Massiello group. They said the exact opposite of what their two real estate agents said, so if
505 you guys needed documentation on that, I wished you would have asked for it because I feel like my words
506 mean nothing because I don't have a degree. So I just wanted to say that. The other thing is again I don't
507 understand why for workforce housing the lawyer had mentioned all these towns and the percentages. None
508 of the towns he mentioned were in that HUD bracket that I had mentioned to you earlier to get the higher
509 rentals. The Londonderry, the Candia, Nottingham, Deerfield...so that being said. The other thing is I know
510 that I took this off of the southern New Hampshire Planning Department. As of right now, there are three
511 hundred thirty three (333) rentals in Londonderry for open. So again, if there's a need there would be no
512 rentals. I don't understand why we're afraid to defend ourselves in court. We've had attorneys come up here
513 and tell you that this is defensible in court...number one. It's all about the words they believe with reasonable,
514 I think in my opinion, it's interpretation and it saddens my heart to hear these things. The other thing I
515 wanted to point out is that there was just story in the Union Leader about a developer...I'm sure all of you
516 guys know who used to live in Londonderry...Anagnos. He had a workforce housing project. He now owes the
517 town of Manchester because he can't fill it. It's failing. It's empty. So you really have a decision about...and I
518 know Jim no disrespect go to Planning, but the fact is....is then why do you have us here to give us our
519 opinions time after time again and our concerns and things that we know and we spend time researching on
520 doesn't come with validity and that's how I feel. I feel like what I'm saying means nothing, and I love my town,
521 but you're forcing me to move. I mean, I'm not going to be able to sell my house...you know, the traffic will be
522 horrific. If he can't rent those apartments and they do go to Section 8, or are abandoned? What is that going
523 to do for me? It's bad enough where we live now and how crazy it is over there with accidents and problems
524 with break-ins, and it's only going to get worse. What about the undue burden to the people who already live
525 in this area? Who've been paying taxes. Who bought there house seeing an open piece of land and said oh
526 the only thing that's going to come there is more houses. Neven in my wildest imagination that I believe that
527 that was going to happen...I'm sorry for being passionate and speaking off term, but you I have to say
528 this...you people are...we're all in the same community please hear my voice. Don't be afraid.

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530 JIM SMITH: Does anyone have a comment? And we're taking about the fifty (50) percent versus the seventy
531 five (75) percent.

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GREG STANLEY: Greg Stanley, 112 Hardy Road. I'm just trying to understand how it works...so the rent that they can get is fourteen hundred (\$1,400) for the...

JIM SMITH: Based on the current income.

GREG STANLEY: Right.

JIM SMITH: It changes year to year.

GREG STANLEY: So if someone comes in there and they can't pay fourteen hundred (\$1,400) then they get a pay back from the government for that fourteen hundred (\$1,400) dollars, or no?

JIM SMITH: This is not subsidized. In other words, you either fit into that income bracket, or you don't.

GREG STANLEY: So if you fit into that bracket you pay fourteen hundred (\$1,400) dollars.

JIM SMITH: Right.

GREG STANLEY: And for the people who can afford more they're going to pay...we don't know what that amount is...

JIM SMITH: Right.

GREG STANLEY: ...but it will probably be higher than the going rate in any other the general areas? So I guess I have that question. Again, as a property owner in the area my concern is the ongoing maintenance of this particular property given that you know there's going to be this large complex there. If it's not well taken care of because they can't get people to live there then certainly there's going to be an impact on those of us who live in the surrounding area. My other comment is...is workforce housing only good for north Londonderry? I ask the questions because we have Wallace Farms. We have this project. We have the project right around the corner on Mammoth road. I understand that we have water and sewer utilities there but why aren't we building water and sewer utilities throughout the town so that we can position workforce housing in other areas besides just north Londonderry? That's my question. I mean, it doesn't make a whole lot of sense to me. It seems like the punitive impact is on those of us who live in this area. Again, we moved into this area you know twenty (20) ...seventeen (17) years ago and we live next to open space. The size of the building does matter from my perspective. The ability to maintain this area does matter from my perspective. So again that's kind of where I'm coming from and I'd appreciate it if you again took that into consideration. Thank you.

GEORGE YANKOPOULOS: George Yankopoulos, 49 Stonehenge Rd. Specifically, in reference to the gentlemen presenting their proposal here...normally, I would think that the real estate agencies that are making their comments here tonight are local and have a conflict of interest. If I was in their shoes I would have found real estate professionals outside of this area. So the letters although their intention was good there is a conflict of interest. They are around the corner. They have business in this area. It would have

576 been wiser to have elsewhere someone independent someone without the influence in the area. That's a
577 very strong bug in my...in hearing all of this right now. If they are coming here for a variance for the reduction
578 of the workforce housing from seventy five (75) to fifty (50)...my question becomes is to make it viable why
579 aren't they coming for variances to have market rate housing in this area and coming for that variance to allow
580 that? If that's possible from your perspective? Wouldn't they be able to come to this Board and say okay
581 instead of seventy five (75) let's go down to twenty five (25) because it makes it more variable? I understand
582 your ordinances. Or let's not even go for workforce housing. Let's do something else that would make more
583 money or as much money without the burden of the workforce housing. Is that a possibility? That's the only
584 other aspect is, we're talking about reducing the burden so they can make more money. Isn't there...wouldn't
585 they be able to come to get variances for other types of housing? Outside of, you know, beautiful one-acre
586 lots like we all have in the neighborhood presently. Or a lot of us do. Granted, there are some apartments in
587 the area. So that's my only comments, but questioning the letters from the agencies. Thank you.
588

589 JAMES SMITH: Anyone else? Yes.

591 BILL GARVEY: Bill Garvey, 110 Hardy Road. Speaking specifically to this variance. I didn't get a clear
592 indication...it was brought up a couple meetings ago, the \$1,440 a month, does that include heat and utilities?
593

594 JAMES SMITH: Yes, I believe it does.

596 BILL GARVEY: It does? Okay. And in regard to the percentage. Their big purpose of doing this project was to
597 bring workforce housing to Londonderry, I believe from what I heard. And now one of the first things they did
598 is they want to reduce that percentage. It seems to me it's a total contradiction and it seems to me the
599 underlying reason might be to use that as a guise to get the project passed and build out a different type of
600 housing. Thank you.

602 JAMES SMITH: Anyone else? Back to the...wait a minute. Okay, ma'am?

604 PAULINE CARON: Pauline Caron, 369 Mammoth Road. Now, the workforce housing units have to be available
605 for a 40 year period, I think. Is that correct?

607 JAMES SMITH: Right.

609 BILL TUCKER: That is.

611 PAULINE CARON: If the units that are not workforce housing...can they be turned into condos? That's a
612 question I have.

614 JAMES SMITH: I'll ask our zoning official on that one.

616 RICHARD CANUEL: Yeah, by the ordinance, if it's a true workforce housing project, it cannot be
617 condominiumized.

619 Thank you. Thank you.

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JAMES SMITH: Anyone else?

DOUG ZINKEVICZ: Doug Zinkevicz, 251 Winding Pond Road. I just wanted to say okay, fine, now we have to have workforce housing. Okay, fine. I guess we have the demand, whatever. But now, oh, wait a minute, not 75%. We want to knock it down. It's like have your cake and eat it too. It's like one way or the other. You're gonna go with workforce housing, well then, let's do the 75% 'cause we have that demand. We have that need. Why would we want to change it? Thank you.

JAMES SMITH: Is there anyone else who would like make a comment? If not, I'll bring it back to the applicant.

BILL TUCKER: Just a couple things for clarity. To confirm, yes, this will be deed restricted for 40 years, so it has to be workforce housing for that period. The \$1,440 or whatever the rent may be in future years, it goes up and down depending on the income level, median income in the area, that has to include utilities. If you have anyone pay for their own utilities, you have to lower the rent by that amount, so that's the max for "housing." A number of the issues that have been raised here have really, are really Planning Board issues. And I think we need to focus on our request to lower the requirement from 75 to 50. It's also been stated that there were a lot of opinions, words. We submitted a report by Mr. Thibeault, well recognized, that demonstrates that this variance is necessary in order for the project to be economically viable and that report has been reviewed, peer reviewed by the Town consultant and he has confirmed Mr. Thibeault's findings. So I think the facts speak for themselves and that this variance is necessary for the project to be economically viable. Thank you.

JAMES SMITH: Okay. Anybody else on the Board have questions? Comments?

NEIL DUNN: I would like to make a comment. I truly feel the pain out there. It's not that I don't think that an apartment complex up there would not impact property values. The difference is in going from 50%...from 75% has really no impact. My perception of 16 units versus 18 units has no impact. However, putting the apartment complex up there, I do agree with you. But that's not our purview. Our purview is what units are available and what's being provided and getting to the 75% versus 50%. If you read the State statute, which takes precedence over the other one, "A municipality shall not fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable" [RSA 674:59]. So we just voted to re-look at our zoning ordinance and rewrite them. If we had a study that said we did our due diligence and workforce housing, we have our fair share of the market value, then that is really out of our purview. We're still here for the ordinance. If the ordinance...that's a Planning Board thing to decide if they're gonna give that, so we're here based on the ordinance, the written code, and that's all we really can go on. We're not the Planning Board. The Planning Board decides we have enough workforce housing and they are the ones that would deny the conditional report if that was...use if that was where it's at. We don't have a lot of room, in my opinion.

DEB PAUL: [indistinct] opinion.

[Laughter]

663 JAMES SMITH: Okay. Why don't we close this hearing and we'll go into the deliberative portion of it and have
664 you got one of those facts sheets?
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666 NEIL DUNN: I have.
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668 DELIBERATIONS:
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670 JAMES SMITH: Okay, let's go down through the...
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672 DAVID PAQUETTE: [Indistinct]
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674 NEIL DUNN: Hmmm?
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676 DAVID PAQUETTE: In fact you do?
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678 NEIL DUNN: In fact, I do.
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680 JAMES SMITH: Okay, first one. And actually, one and two are very similar. Granting the variance would not
681 be contrary to the public interest because...And this number two is, the spirit of the ordinance would or would
682 not be served because...
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684 NEIL DUNN: By reducing from 75 to 50 percent.
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686 JAMES SMITH: Correct.
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688 JIM TIRABASSI: Basically it just makes the project a viable project.
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690 JAMES SMITH: Basic...
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692 JIM TIRABASSI: Which is really all it does, because it doesn't increase the stock that much because the
693 percentage is actually being driven down. So it just makes it a viable project.
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695 NEIL DUNN: So granting the variance would not be...
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697 JIM TIRABASSI: And even number three would basically be the same thing. It would just allow the project to
698 go forward.
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700 DAVID PAQUETTE: Yeah, there is really no impact to the public.
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702 JIM TIRABASSI: Yeah, there's no economic impact because that's a...
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704 DAVID PAQUETTE: Change in...
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706 JIM TIRABASSI: ...then, right, that's an internal...

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JAMES SMITH: Yeah, it's internal.

JIM TIRABASSI: [Indistinct]. Yeah, it's an internal environment. It has nothing to do with the external environment, the rents rates. And it's got nothing to do whether they can continue funding it. That's...

JAMES SMITH: It just changes the income stream.

JIM TIRABASSI: Right.

JAMES SMITH: So one and two we've covered?

[Pause]

NEIL DUNN: Go ahead if you want to.

JAMES SMITH: Okay, granting the variance would or would not do substantial justice because...

JIM TIRABASSI: Well, it would do it because it just allows the project to advance.

JAMES SMITH: Yeah.

DAVID PAQUETTE: It will not provide a benefit that will be outweighed by the loss to the applicant.

JAMES SMITH: Right.

DAVID PAQUETTE: So a denial...

JAMES SMITH: Would stop the project.

DAVID PAQUETTE: ...yeah, wouldn't provide a benefit to the public...

JAMES SMITH: Yeah.

DAVID PAQUETTE: ...by...it would be outweighed by a loss to the applicant.

JAMES SMITH: You all set?

NEIL DUNN: Mm-hmm.

JAMES SMITH: Number four; for the following reasons, the values of surrounding property would or would not be diminished?

JIM TIRABASSI: They wouldn't. It's an internal environment, not an external threat.

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JAMES SMITH: Yeah. There's no...

DAVID PAQUETTE: No impact to...

JAMES SMITH: ...no impact to the...Changing the way the money is collected.

[Pause]

NEIL DUNN: Mm-hmm.

JAMES SMITH: Number five; owing to the special conditions of the property that distinguish it from properties in the area, denial of the variance would result in an unnecessary hardship because...In this one, we also have to look at the workforce housing RSA, which basically says that you can't have something which makes it economically unviable.

DAVID PAQUETTE: And the requirement for 75% workforce housing units in the project is arbitrary. That makes the...

[Pause]

JAMES SMITH: Any other comments?

DAVID PAQUETTE: Reasonable and realistic opportunities for the development of workforce housing means "opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e" [RSA 674:58].

[Pause]

DAVID PAQUETTE: I think a reference to RSA 672:1, III-e....or III...

NEIL DUNN: 672...

DAVID PAQUETTE: 672:1, III-e; "All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low and moderate income person and families is in the best interests of each community and the state of New Hampshire and serves a vital public need."

NEIL DUNN: This is not low, though, so I don't agree with that.

DAVID PAQUETTE: Mmm. So the workforce housing definitions refer to that RSA; 'regulations adopted pursuant to this chapter and consistent with 672:1,' so...

795 NEIL DUNN: So maybe more to the decent living conditions.
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797 DAVID PAQUETTE: Yeah, yeah, maybe not necessarily the...
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799 NEIL DUNN: ...not in the low income...
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801 DAVID PAQUETTE: ...yeah, yeah.
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803 JAMES SMITH: Okay. Have you got enough?
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805 DAVID PAQUETTE: Opportunity for development of such housing shall not be not be prohibited or
806 unreasonably discouraged by use of municipal planning and zoning powers or unreasonable interpretation of
807 such powers" [RSA 672:1, III-e]. I think most of the verbiage that fits our particular cause.
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809 JAMES SMITH: Okay. Can we make a motion?
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811 NEIL DUNN: Mr. Chairman, I'd like to make a motion to grant case 11/19/2014-5 as granting the variance
812 would not be contrary to the public interest as there is no impact on the visible exterior of the project, it all
813 has to do with financial viability; and that the spirit of the ordinance is observed due to the inclusionary
814 housing provisions in the town ordinance that allows for workforce housing; granting the variance would do
815 substantial justice because the economics of an ordinance cannot impact the State statute for workforce
816 housing; and the values of the surrounding properties would not be diminished as there is no external impact
817 due to reducing 75% to 50%, the workforce housing number of units; and that there is not a fair and
818 substantial relationship with the general purpose of the ordinance as 75% workforce housing is high compared
819 to regional values and would not comply with the inclusionary viability as stated in 674:58; and it is a
820 reasonable use because multi-family housing is allowed in that area and the Londonderry workforce housing
821 task force stated that area as a prime workforce housing zone.
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823 JAMES SMITH: Okay, do I have a second?
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825 DAVID PAQUETTE: I second.
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827 JAMES SMITH: Second. All those in favor?
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829 ALL: Aye.
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831 RESULT: THE MOTION TO GRANT CASE NO. 11/19/2014-5 WAS APPROVED, 5-0-0.
832
833 RESPECTFULLY SUBMITTED,
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837 DAVE PAQUETTE, CLERK
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839 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
840 SECRETARY

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