

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

DATE: OCTOBER 15, 2014

CASE NOS.: 9/17/2014-3 AND 9/17/2014-4 (CONTINUED)

APPLICANT: HILLSIDE SENIOR HOUSING, LLC
39 BLOSSOM ROAD
WINDHAM, NH 03087

LOCATION: 105 HILLSIDE AVENUE; 10-92; AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
JIM TIRABASSI, VOTING MEMBER
ANNETTE STOLLER, VOTING ALTERNATE
JACKIE BENARD, ACTING CLERK

REQUEST: CASE NO. 9/17/2014-3: VARIANCE TO ALLOW A WORKFORCE HOUSING DEVELOPMENT ON A PARCEL WITH 16.4 ACRES WHERE 20 ACRES IS REQUIRED BY SECTION 2.3.3.7.1.1.6.

CASE NO. 9/17/2014-4: VARIANCE TO ALLOW A WORKFORCE HOUSING DEVELOPMENT TO BUILD 14 MULTI-FAMILY BUILDINGS WHERE ONLY THREE BUILDINGS ARE PERMITTED PER YEAR IN ACCORDANCE WITH SECTION 1.3.3.3.

PRESENTATION: Case No. 9/17/2014-3 was read into the record with two previous cases listed.

JIM SMITH: Ok...I see case three and four are related.

JOHN CRONIN: Yes Mr. Chairman.

JIM SMITH: Do you want to...?

JOHN CRONIN: I have no objection to presenting them together. The facts will be relevant to both cases. We would like you to rule on the hearings independently though.

JIM SMITH: Ok...in that case would you read the next case in just so we have it...?

[Case No. 9/17/2014-3 was read into the record with the same two previous cases listed].

JIM SMITH: Ok, who will be presenting?

45

46 JOHN CRONIN: Mr. Chairman, members of the Board, staff, my name is John Cronin. I am an attorney with the
47 firm Cronin & Bisson in Manchester, New Hampshire. Seated to my right, your left is Mr. Joe Caldarola. He is
48 the opposed developer for this particular project. As we get started with these two cases, it is apparent from
49 the application that these are scheduled as workforce housing projects which has a...a unique meaning here in
50 the State of New Hampshire in recent years. We look are this particular project which I have put up on the
51 easel and the ninety-six units are proposed on a sixteen point four acre parcel of land. We were scheduled
52 here last month but there was a short...short Board so we elevated to defer but at that time we had an
53 opportunity to speak to many people in the audience who had comments about the project as it related to
54 lighting, traffic and a whole host of other matters that are typically reserved for the Planning Board. Mr.
55 Caldarola has met with them a few times and had an opportunity to take their comments and make some
56 revisions to the plan but tonight here before you we really have two narrow issues. One, we will have this to
57 go forward on sixty point four acres versus twenty and the second variance relates to phasing. Not the
58 number of buildings that would be allowed, but what would we be allowed per year. The Ordinance itself
59 when you look at the workforce housing Ordinance, it allows up to ten units per acre on a site of this particular
60 magnitude, you could have one hundred and sixty-four units by right under the Ordinance but we are only
61 seeking ninety-six. When we take a look at the site specifics of this particular project, it sits over to the east
62 side of 93, near the Derry line. If you look up at the board here...you will see the west...

63

64 JIM SMITH: Do you want to use one of the mics...?

65

66 JOHN CRONIN: I talked to the audio man and he set this up so he is fine with it...

67

68 JIM SMITH: Oh, ok...

69

70 JOHN CRONIN: As long as I speak loud so I hope I am doing alright back there. So sitting to the west here is an
71 industrial read plant so that buffers it pretty much on the whole line to the west. Down here, if you look to the
72 south-west corner there are two buildings of commercial and industrial nature. There is one here that appears
73 to be occupied by a boxing and karate type facility. Adjacent to that seems to be furniture storage and some
74 heavy truck maintenance. The principle road here coming from Londonderry Road, along Gilcrest Avenue
75 where the entry is proposed is a street that has improved with middle aged homes but it is clearly a residential
76 street. Up here to the side is a dead-end street that is also improved with residential structures. When I go
77 back and talk about workforce housing, about fifteen years ago in the State of New Hampshire there was a
78 case called Britain vs. Chester. There was a developer that was seeking to develop apartments out there that
79 were not allowed under the ordinance and it was a long drawn our battle. That went up to the Supreme Court
80 and published an option that talked about the need for a balanced and diversified supply of housing. That was
81 codified initially in the enabling legislation for all Planning and Zoning Board land use criteria and you can find
82 it in RSA 672-1...it's subsection 3E and I will read it because I think it has some relevance to the public
83 interested and spirit intent of the ordinance criteria which are two of the prongs of the variance. It stated and
84 I will read 'all citizens of the State benefit from a balanced supply of housing which is affordable to persons
85 and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and
86 affordable to low and moderate income persons and families is in the best interest...and I repeat...in the best
87 interest of each community in the State of New Hampshire and serves a vital public need. Opportunity for
88 development of such housing shall not be prohibited or unreasonable discouraged by use of municipal

89 planning and zoning power by unreasonable interpretation of such powers. That has been on the books for a
90 long time and we have represented other developers in different communities with workforce housing and
91 that was basically the statute that we relied upon because most Towns did not have Ordinances that
92 specifically allowed workforce housing. The legislature in their drive to make New Hampshire a better place
93 concerned about job creation, if you want to have jobs you have to bring businesses to communities. To bring
94 businesses you have to have a supply of workers. To have a supply of workers you need to have decent and
95 safe affordable housing. That lead to the adoption to what we now call workforce housing statutes. That is a
96 comprehensive set of regulations that are relatively new in and they are found out at six, seventy-four, fifty-
97 eight is where they start. A particular note when they talk in this particular section, they are giving directions
98 to communities basically inviting them to adopt workforce housing in most zones in the way residents are
99 applied. One of the things that they expressly state...[clearing of throat]...and that is at six, seventy-four, fifty-
100 nine, they talk about the Towns should not unreasonable limit the lot size on which workforce housing can be
101 created. I was to compliment the folks in Londonderry, the Planners and staff and Board members like
102 yourself who I think are on the edge of legislator desire by drafting and adopting a workforce housing
103 ordinance. Many communities have tried and failed. Other communities have not even made an attempt. You
104 folks have actually gone to and you have adopted an ordinance that is comprehensive and I am sure is
105 designed to address the requirements of the statute. I will say for those how have been on community's or
106 have been charged with the task of drafting a zoning ordinance, it is not an easy job, especially when you are
107 dealing with enabling legislation. To envision every particular circumstance to draft every and, or, if correctly
108 so it gets consistent interpretation and meaning for all intents and purposes I think Londonderry did a decent
109 job and there are few issues we think may have been overlooked and misinterpreted. The first being the
110 twenty acre size limitation. All zoning ordinance have to be based on some legit health, safety and welfare
111 concern, no doubt about it. We can see that. Where the twenty acres came from is not really apparent in the
112 legislative history or in the worksheet that the Town has published, which I have a copy of it. It is well done, "A
113 Citizens Guide to Workforce Housing in Londonderry, New Hampshire", and I would submit that there is no
114 rational basis of this to challenge healthy, safety and welfare by putting workforce housing, if it is
115 appropriately situated on a sixteen point four acre parcel versus a twenty acre parcel. This particular sits, its
116 topography is unique. There is a berm at Gilcreast and it goes downhill so a lot of these units may slow down
117 and will be shielded from the terrain. We believe that the unit sizes are antiquity spaced and by giving a town
118 house type development, it creates a diversified look, something that may be more appealing to many
119 consumers in the workforce than a big box apartment lime structure. At this point, before I address the five
120 criteria, I would like to turn it over to Mr. Caldrola to just tell you about...a little about his experience and his
121 vision so you can put it into context when you are weighing the criteria for the variance.
122

123 Good evening Chairman, Board...I have been...I will tell you a little about myself and then a little bit about the
124 land. I have been doing small and medium sized developments for about twenty years. I live in Portsmouth
125 and I build everything I develop. So...for me the quality of a project is important and part of that is the
126 relationship with neighbored so I was glad at the last meeting that things got continued because it gave us an
127 opportunity to talk about I did meet with neighbors a couple times and I plan on continuing to do that to
128 address any concerns that may come up. The land itself, I am going to go to the board...it has...has some
129 unique features about it. One is that it drops off...substantially...from the existing driveway on Hillside...the
130 existing houses...goes up a bit and then down but from the street level it drops off thirty feet to this back area
131 here which is more or less thirty feet lower. And from the abutting properties over...it drops off about fifty
132 feet. When you get down to the bottom here about fifty feet below those yards. Not quite so much corner lot.

133 That is more like the thirty foot. So once of the unique things about this when I first looked at it you know it
134 was previously approved for two large buildings and they never got built and I looked at it and I didn't think it
135 was practical to do it because it...it such a steep site that unless you work with the site and try to just flatted in
136 out with two big footprints, it is going to be expensive and I didn't think it made any sense. So...what I asked...I
137 worked with the engineers to develop a plan...a...an approach that basically follows the contoured. So as a
138 result of that the building's and the streets, they are going to basically be at the contours of the field
139 now...and...and it will look...it will maintain that open kind of feeling it has now. These upper buildings will be
140 looking over the top of the other ones. The people that live across the street on Hillside, for instance, this
141 building here...they would be looking over the top of this berm at the second floor of this building because it is
142 going to sit down at an elevation. Similarly these buildings here would be significantly below the street. So it is
143 buffered in that sense and we are not going anywhere near the maximum allowed for workforce housing...and
144 these are...are town houses. On the uphill side there...there are two stories and on the downhill side there are
145 three. The...I looked at the possibility of doing senior housing on the site with this kind of an approach, and it
146 didn't make any sense to me because half of the units are upslope because of the steepness of the property
147 and the land. You can't get up steep enough to get into the first floor. I have built a lot of senior housing and
148 one of the key things you have to look for is...you know...no steps. The idea of doing senior housing didn't
149 make any sense to me. There is a large wetlands here. This property and it also extends eight acres or
150 so...so...on the transit property here. So...even though it is a sixteen acre site, effetely if you stand here and
151 look across you would have larger site. So I think that is a unique characteristic of that as well. I guess that is it
152 for now unless you have any questions.

153
154 JOHN CRONIN: I will address first the acreage variance. The variance will not be contrary to the public interest.
155 This is one of those rare cases where I think this is an easy one for me and that satisfies because the legislature
156 says so. The legislature says so that it is in the public interest to develop this type of housing. It also says that
157 there shouldn't be any unreasonable restrictions on lot size. With respect to the spirit and intent of the
158 ordinance...workforce housing is allowed as a matter right in this zone. It is allowed in the AR-1 zone which is
159 where this is located. The supreme court says that the use was allowed as a matter of right...it would be
160 consistent with the spirit and intent of the ordinance. Substantial justice is a subjective pong. I know it's
161 discretionary. It is a balancing test that you have to do. What is the gain to the public at large, not necessarily
162 abutters or people on the other property, but the public at large? If this variance is denied versus the harm to
163 the applicant that if it is denied. In this particular case I see no benefit to the public if it is denied. One, the
164 State and the Town are looking for clean, quality, affordable workforce housing projects in appropriate
165 locations. This meets all of them. This particular area which is unique in the sense that you have buffered from
166 both industrial and commercial on one side of it and it has topography that will create a natural buffer by
167 sloping down as much as fifty feet from surrounding properties. The value of the surrounding properties will
168 not be diminished. We submitted previously by mail a letter of opinion from Mr. Martin McKeen. He is a
169 licensed appraiser in the State of New Hampshire. He went out to the site, he looked at the plans and he
170 rendered his opinion. I think there will be no decrease or diminishment in the value of surrounding properties
171 if these variances are granted. Again, the test is not the value, or the subjective value to an individual owner. It
172 is diminished value in the market place and Mr. McKeen being an expert has issued his opinion which should
173 be reflected on the record. Literal enforcement of the provisions of the ordinance will result in an unnecessary
174 hardship. A...because only to special conditions of the property to distinguish it from other properties, no fair
175 and substantial relationship exists between the general public purposes of the ordinance and the specific
176 application of the provision to this particular property. It is interesting to note that the ordinance in and of

177 itself, it allows workforce housing on lots of less than twenty acres. It expressly allows that. As caviar it allows
178 it when there is a historical use that is involved but the tenor of that particular section tells me that the
179 drafters recognized that there is no public health, safety or welfare harm by allowing workforce housing on a
180 parcel of less than twenty acres. The next step in this problem is whether or not the use is a reasonable one.
181 We believe that all facts surrounding it not only site specific conditions, the history of the lot which
182 encourages these types of projects and takes precedent over local ordinance document that this is a
183 reasonable project. It is well designed, well laid out. It is substantially less in density than what would
184 otherwise be allowed. It is appropriately screened. One of the things that Mr. Caldarola did mention in his
185 discussions with some of the interested parties is he has already made adjustments to the entrance access at
186 the request of one of the abutters who was concerned about some headlight issues. They have also placed on
187 the plan that solid bar which is going to be a berm that will be built up to provide further shelter. With respect
188 to this particular application and lot size, we believe that we meet the criteria and we would ask you to
189 approve the variance. The next variance requested is based on the phasing plan and that is found in section
190 1.3.3.3 of the ordinance and it is my opinion after looking at these types of ordinances for twenty-five years,
191 that this particular provision which limits the number of units you can build a year and its relationship to the
192 number of buildings appears in my view to be a drafting error. If you look at the language carefully it is
193 obvious that the intent is to limit the number of units that can be built. That is forty-eight per year. We are
194 willing to live within that requirement. Certainly the marketplace will dictate whether that is even possible
195 with absorption but if it is the strongest market demand for these particular units we are willing to live with
196 the 48 per year limitation. Where the drafting of this particular section gets a little bit quirky, it talks about
197 workforce housing in buildings with a max of sixteen units and limiting not only forty eight units but three
198 building's per year. I think the drafters envision that the only type of workforce housing that would be allowed
199 would be your traditional multiplex apartment buildings. Sixteen units in a multiplex is fairly standard. We see
200 twelves, we see sixteen, you see eighteen, twenty-two and twenty-four. Your standard square box apartment,
201 three levels, a couple of two bedrooms in the middle, singles on the corners and that is usually how it works. I
202 see no value of any health, safety and welfare concern to limit it to three buildings. I think it's arbitrary and
203 not really satisfying any legitimate goal. If this variance were denied, you could take these particular building's
204 and push them together. Most of them are six and seven units and meet that three building criteria. It would
205 not be as attractive as a site, it would limit spacing, it would limit open area, it would make it look like a more
206 dense project like development. The variance that we are asking here for again is not to the number of units
207 and we are living by the total, it is just to relax that three building minimum. These buildings here will have six
208 or seven buildings up to the forty-eight per year as allowed by the ordinance. To address this particular
209 application...the variance will not be contrary to the public interest. We believe it will not be because we are
210 willing to abide with the underlying thrust of the ordinance to limit absorption to forty-eight units. It is a
211 growth control or a phasing type ordinance technique which is typical and normal for inclusionary zoning. The
212 spirit of the ordinance is observed again by allowing this, you are allowing workforce housing which is
213 consistent not only with the state legislative intent but clearly by the Town of Londonderry and their efforts to
214 draft a workforce housing ordinance. The values of surrounding property will not be diminished. I incorporate
215 my reference my letter of reference to Mr. McKeen who pines to both issues in his letter and he finds that
216 there will be no reduction in market value of surrounding properties if you allow maybe six buildings per year
217 as opposed to three as long as it is limited to forty eight in total. In terms of the hardship criteria, I can't think
218 of a fair and substantial relationship for limiting development to three building as it applies to this particular
219 use. I don't think there was any malicious intent. I think people had a vision of workforce housing being all big
220 boxes. That is not what the town wants, that's not what the State wants. They want different and diverse

221 housing types. This is different and diverse in that it provides a townhouse type environment. Again, we stated
222 that we believe that the use is reasonable and it is consistent both with the workforce housing ordinance and
223 the limitation on forty-eight units per year. I think I have addressed all of the criteria Mr. Chairman. My.
224 Caldarola and I would be happy to entertain any questions. I recognize that these hearings are open to the
225 public for public comment. I only ask that the requested speakers identify themselves either as abutters or as
226 interested parties so we can weigh their comments. Thank you very much.

227
228 JIM SMITH: Ok...comments or questions form the Board?

229
230 JACKIE BERNARD: One comment Mr. Chairman, there is a letter in here from McKeen appraisal services to
231 Smithfield Construction. DO you want that letter read?

232
233 JIM SMITH: Yeah if you could...

234
235 JACKIE BERNARD: Ok...and I apologize...this is from McKeen Appraisal Services dated Sept...September
236 seventeenth, twenty fourteen. Dear Mr. Caldarola, pursuant to your request I have studied the area
237 surrounding the property known as tax map ten, lot ninety-two, Hillside Ave in the Town of Londonderry, New
238 Hampshire. The property is located in eastern Londonderry very near the Derry town line. The property has
239 commercial property uses to its west and residential uses to the north, east and south. There is a single family
240 home currently on the site but the plan is to razz that home in order to create the proposed development.
241 According to the plan that was provided to me, the site contains sixteen point four six acres of land and it is
242 your intent to construct ninety-six town house style condominium units in accordance with the Town of
243 Londonderry's inclusionary housing ordinance. It is my understanding that you are requesting relief in the
244 form of a variance because the current site size requirement for the project is twenty acres and the subject
245 site size has sixteen point four, six acres. Further, the current ordinance allows for the construction of forty
246 eight units per year in a maximum of three buildings. Your request is to construct not more than forty-eight
247 units per year but in buildings that will have six or seven units per building which translates to six...to eight
248 buildings per year rather than the presently allowed three buildings. In this case the question places before
249 the appraised is whether the development of the proposed project on sixteen point four, six acres rather than
250 the currently allowed twenty acres or the development of the project in fourteen buildings rather than the
251 allowable six buildings would have any negative impact on the value of residential properties in the area.
252 Based on twenty-six years of residential appraisal experience in the Southern New Hampshire region, my
253 inspection of the property and associated research, it is my opinion that the neighboring residential properties
254 will not suffer any reduction in market value is the variances are granted. It is my opinion that the decision of a
255 perspective purchaser for a home that either abuts it or is in close proximity to the subject parcel would not
256 be impacted by the difference in the subject's site size of sixteen point four six versus twenty acres or by the
257 number of buildings in which the abutting units are built. It is entirely possible that the appearance of the
258 ninety-six unit proposed project will be more appealing spread out over fourteen buildings than if they were
259 built in six large buildings. Respectively submitted by Mark. H McKeen. And the letter is in both folders...files...

260
261 JIM SMITH: Ok...I will open it up to the public. Anyone in favor of this project...anyone with in opposition or
262 question. Please approach a mic and identify yourself. There is a mic over here.

264 BOB ROSS: My name is Bob Ross. I am an abutter at 2 Holmes Street. I have lived in Londonderry for twenty-
265 seven years. I understand all of the book reading of the workforce housing but if you are familiar with the
266 neighborhood and what has been character of the whole neighborhood and surrounding the street, they are
267 all single family homes. There is no more than eight or nine homes on each of the streets from the time you
268 get to where the property line is, into Derry. Except for Beacon Street, which is the back side that they are
269 talking, which probably has fourteen homes. The character of the neighborhood is single family homes. We
270 have businesses as mentioned that have changed hands many times, a dance studio now a boxing studio.
271 There is an auto body shop and they failed to mention also, next to that is a warehouse that has tractor
272 trailers coming in throughout the day and when they. Traffic sometimes gets held up. We have dealt with wall
273 of that. There is also an antique store at the corner and they are here proposing in the changes that they made
274 on the latest drawing to move the entrance for the two home owners who were across the street from there.
275 now puts you in a position where you are facing a road that has a restaurant down at the end of the street and
276 part of the concerns that I have that I have witnessed over my twenty-seven years is the road itself is
277 undersized. There is only going to be one exit and one entrance location which is off Hillside. They failed to
278 mention that there is an emergency road that was on the original plan that went to the Planning Board and if I
279 can just, clarification, reading the other minutes, there was discussion that there was a twenty-six unit and a
280 twenty-four unit senior housing that was proposed on site. I believe the Zoning Board approved conditionally
281 fifteen of each building. If I heard it correctly from the minutes which means thirty units. The problems was
282 that there was also going to have to be a sewer pump station put on this property that would have to go along
283 our property line off of Holmes Street and be tied into Derry. To this point I don't know whether that was ever
284 requested because the vote that went to the Planning Board on March seventh, two thousand and
285 seven...there...some of the highlights where the site was proposed for fifty units, they recommended
286 conditional approval because they didn't come back with all these plans, I am told that no vote was taken. The
287 modification that you originally had on the thirty units, now we are being asked to take on ninety six units on a
288 road that at the location of where they want to put an entrance and an exit, currently is seventeen feet wide,
289 has a tree in front of it so it they do push the entrance back, you will then be going out if you could do a site
290 inspection to see the parking lot to the boxing studio is right next to where the entrance and exit is going to
291 be. Coming up from Derry pizza, to those who are familiar with that, during the day the different times of day,
292 not only do we have the traffic coming from the pizza place...my biggest concern is safety. It's...it's a road that
293 is not built to have ninety six units put on a parcel of property which is three point six acres less than what is in
294 the books. Some common sense has to be used when you are going to look at putting ninety-six units, possibly
295 two plus cares that are going to be coming and going and you know when the guy who owned the property
296 originally passed away, something would be built there. When we heard senior citizen housing, it made some
297 sense but still the property doesn't show that it can support with the road that it is...where cars are coming
298 from Derry and at prime time in the morning and especially at night with those who do come to Londonderry
299 and try to go into Derry, the backup that goes into 93, a lot of people get off on Londonderry Road and they
300 take the first right which is Hillside, not Gilcreast...Hillside. That road becomes very active at all rush hour
301 traffic. So...if...if you have that you add ninety-six town houses I don't understand the philosophy of the grade
302 that senior citizen housing he can put ninety six extra units into an area that is already small, surrounded by
303 wetlands, will not have a back exit or entrance. They have one way to get out and the other exit will be for
304 emergency vehicles only. With the amount of buildings that are being increase there will be increased traffic.
305 That is a safety concern. So if a study has not been done yet, why the traffic study, that...that has to be done
306 because that is one of our concerns. Especially with the school buses stop at the end of Holmes Street...where
307 my kids were picked up, if you have ninety-six units, point two miles down the road where a bus is stopping

308 and they have people flying already down the street, there is potential for accidents. In...in some of the
309 language on why he is looking for it...it is the only large parcel of land in this section of town. They have
310 already in Derry, which is two tenths of a mile down...took a corner lot where the water town was and put two
311 houses on the corner of Holmes Street that have no frontage. They just walk out their front door and go
312 straight down. My opinion, they are trying to maximize to get the biggest bang out of the biggest buck but
313 there are many units, and that is their right but you have to have some common sense. As I mentioned in the
314 beginning. I know the developer tried to reach me. I...I was out of town on business and I don't know how
315 many of the neighbors and I like him to tell me how many he did meet because that to me is important.
316 Changing where the entrance and exit to me is...is...it's...a major safety factor...[pause]...workforce housing in
317 Londonderry is a sensitive subject, as it is. We are all hearing and reading about Woodmont. I don't know all
318 the specifics about workforce housing but does this Town need to have...take the only large parcel of land
319 behind my garage is the town marker. I pay taxes to both Towns. My home is in Londonderry and my garage is
320 in Derry. If that is the only large parcel of land and it is graded, I don't know who's going to appreciate how it
321 looks when you have vehicles coming out all the time. I think I have one or two more points. If the Board is
322 considering approving this variance for sixteen point four which is under the mend, they should take into
323 consideration the possible review the site. I appreciate that they had an estimator that is one person's opinion
324 of the devaluation of the homes in the area. If I was looking to buy a home that was all single family homes
325 and now we are going to be building ninety-six units right in the backyard. I am going to tell you that my
326 property value is going to go down. I would like you to take a really strong look at what they are trying to do
327 with the property. Thank you.

328
329 JIM SMITH: Anyone else? The only thing I would like to suggest to everyone if you are going to come up and
330 speak, try to present new information. Don't just repeat what has already been said because it just prolongs
331 the meeting and it really doesn't accomplish anything.

332
333 ROBERT HOLDEN: My name is Robert Holden, 6 Holmes Street, I am an abutter. You know a lot of it was
334 reiterating the same thing that Mr. Ross had stated about the safety aspect of adding ninety six town houses,
335 that is roughly two hundred cars, just shy of that. You look at the map on there and you see large parcels of
336 land as single family owners have. Single family, single family, single family and then you see the monstrosity. I
337 agree that it is different from what he stated in his opening. It is different from the entire neighborhood. It just
338 doesn't fit. Some of the other things that I want to touch point on is the amount of houses in here and
339 installing single family residential is not a viable option because of the slope. We live in New Hampshire.
340 Houses are built on slopes all the time. Especially single family there are multiple units. It is an option for this
341 area. Multiple areas in there as far as the third party coming in and saying it will not diminish our value. If
342 you...the Board...are looking at a house, single family throughout the entire area, you are going to take into
343 account this is a good neighborhood. Single family, wide open spaces that is why we bought where we did.
344 Now if you look down there and you see ninety-six town houses that are built, stuffed inside of a large single
345 family residence, what does that value hold to you? Is that house now worth as much as if it is a single family
346 house back there? No, it's not. I appreciate a third party getting that on there but in real life it doesn't work
347 that way. People want privacy. We know things have to be built back there but not in a large aspect. As far as
348 the 16.46 acres requiring twenty, a lot of that is wetland. It does abut some of the other properties next to it.
349 There is a pond back there and a lot of marshland so to say you could go roughly ten for every acre is that ten
350 for every buildable acre or is that ten for overall property size to say you could stuff one hundred and sixty in

351 there how are you going to stuff one hundred and sixty. I appreciate that it has been descaled down to ninety-
352 six but it just doesn't fit the neighborhood. I have nothing further.

353
354 JIM SMITH: Ok, anyone else?

355
356 EVA MARVEL: Eva Marvel, 53 Hillside Ave, I am an abutter on the corner of Holmes and Hillside. I am not going
357 to try to go over the same things that they talked about. Those were some of my questions but I guess I had
358 questions about where they are getting their water and sewer. This being Hillside Senior Housing, is that who
359 owns it right now? Is this who the developer is right now who's trying to take the property and build on it?

360
361 JIM SMITH: Who is it under?

362
363 ANNETTE STOLLER: it is under Hillside.

364
365 JACKIE BERNARD: Hillside Senior Housing.

366
367 JIM SMITH: Ok...ok they are the present owners, yes.

368
369 EVA MARVEL: But is this who this developers working with?

370
371 JIM SMITH: I would assume so.

372
373 EVA MARVEL: Yeah and those were some of my concerns to was that you can't just...this town has rules and
374 ordinances and you have a right to stick to them. Just because someone comes and brings a book and tells you
375 this and tells you that...you still have a right. We are a town, we are not a city. I think the Board ought to look
376 at that because it affects me the same way it's affected my neighbors too. Thank you.

377
378 JIM SMITH: Anyone else?

379
380 MARJORIE FACKOVEC: Good evening, my name is Marjorie Fackovec and I live at 23 Beacon Street and I am an
381 abutter. I represent my husband and myself and I would like to say in recent weeks, months actually, there has
382 been a lot of new information in the paper about workforce housing and we need to take that into
383 consideration. Londonderry has done a lot to promote that and there are calls right now for people to put a
384 moratorium on that and to slow down and look at what we are doing and not just keep pushing buildings in.
385 You have pictures around here of Mack's. This is what Londonderry is. It is not putting all these buildings in
386 and seeing how much you can get. Last time we were here it was said that we were planning on selling these
387 for two hundred thousand a piece...and so now you are looking at twenty million dollars that the builder is
388 going to get for this. They're all from out of the area and they are going to leave. We have forty years that,
389 according to our workforce housing, we have to maintain that kind of property. They will be gone with their
390 profits and we have to live with it. Thank you.

391
392 JIM SMITH: Ok...anyone else?

394 MIKE SPELTZ: Mike Speltz, 18 Sugar Plum Lane, I am not an abutter but I did serve on the workforce housing
395 task force so perhaps I can answer Attorney Cronin's question earlier when he said where did the twenty acres
396 come from. True of the workforce housing portion, it is true the senior housing portion, it is throughout our
397 zoning ordinance, throughout our master plan. Our town has made a real effort to maintain its rural character
398 and one of the ways we did that while still trying to accomplish our housing goals was to set a minimum of
399 19.5 or 20.5 and that that is a judgment call that we did settle on. We did settle on twenty acres as a minimum
400 for this type of development and the reason is that it works along with the number of units and buildings and
401 as we took this testimony and as the Town Council took a great deal of testimony on this, the theme kept
402 coming back. Don't screw up Londonderry's rural character, don't take away all of our open spaces and this
403 was a compromise that we arrived at to allow affordable housing but at the same time put it on a large
404 enough piece of land that there could be open spaces. So that is where the twenty acres came from. Thank
405 you Mr. Chairman.

406
407 JIM SMITH: Anyone else?

408
409 ROCKO CLAUD: Rocko Claud, 5 Holmes Street, I abut the property. My wife and I spent a considerable amount
410 of time when we were house shopping and we found this incredible and charming neighborhood with six
411 houses and awesome neighbors. So we invested a year and a half of our life rebuilding our property and
412 reclaiming it and making it a really nice place. We work nights and sleep days. We are looking at a couple of
413 years' worth of construction. Again...we chose a place that we think would increase in value overtime and not
414 decrease and I don't see how developing this isn't going to decrease the value of our property, which is
415 basically in our front and back yard. I guess that is it because everything else, everyone else has touched on.
416 Again thought...Hillside, not even close to a road that should handle that volume of traffic.

417
418 JIM SMITH: Ok. Well before you come up again, is there anyone else who hasn't spoken? Ok...

419
420 EVA MARVEL: Eva Marvel again, 53 Hillside Ave, I do want to mention that I did talk to Joe the last time we
421 were going to have that meeting here in September and I did ask if they would consider putting single family
422 homes in that parcel of land, sixteen point four acres. I just wanted that to be on record that I did say that
423 would fit the environment, the neighborhood better.

424
425 JIM SMITH: Anyone else? At this point the applicants can rebut any of these issues that have been brought up.

426
427 JOHN CRONIN: Briefly Mr. Chairman, the comments are not unexpected and are pretty typical when you have
428 a large size development in the area where people are used to having open space. Unfortunately
429 developments do cause some specific concern to a neighborhood that often times they fear the worst. Mr.
430 Caldarola is an experienced developer and has an excellent track record and has worked with the people and
431 continues to try to work with the people. One thing people need to understand, this is not a planning session.
432 A lot of the comments that were made I'm sure are relevant and important to the individuals but as far as your
433 evaluation of these two very narrow issues, not so much. If we were able to get the variances here tonight
434 that doesn't mean we can putt building permits and start to build. This will be vetted thoroughly by the
435 Planning Board. I am certain they will take a look at the access and traffic studies as they typically do. There
436 has already been some discussion about the back access which I believe the planners wanted as emergency
437 access only. With respect to the widening of the road there was some talk of offsite improvements which Mr.

438 Caldarola said he would do to widen that road and improve it. As far as density, it is grossed density under the
439 ordinance. So if you have twenty acres you can do two hundred and sixteen point four you can do one
440 hundred and sixty four. That is just how it works. Although the gentleman who worked on the committee, I am
441 sure he worked very hard and they took a lot of testimony, I think he made it clear that the number of acres
442 was not really designed on health, safety and welfare, it was arbitrary. It could have been nineteen, it could
443 have been twenty. It could have been seventeen. That is not consistent with the state law. It may be
444 consistent with people in Londonderry want to preserve space and keep workforce housing out. There is also
445 another comment made by another gentleman who said this is the only large parcel in this area. That
446 strengthens the support for workforce housing in that are because if twenty-eight acres was adopted as a
447 means to limit opportunities for workforce housing, that would directly contradict the statute. They certainly
448 have a right to express their options. We do not offer evidence of traffic and those sorts of things because
449 that's what we typically do at the Planning Board. We would be prepared to do that and to provide the
450 evidence to both the Planning Board and its staffers as required. Thank you for the time you have spent on
451 this and I know if has been a long night. We appreciate the time you have allowed us.

452
453 JIM SMITH: Ok, anyone in opposition that has anything.

454
455 I...I just want to say that I understand what the public speakers said and I would probably feel the same way. I
456 can envision this finished and I...I...my sister in law moved to Portsmouth she moved into a hundred unit town
457 house project and it is...it has done well...landscape well. It's not negative. It fits in nicely. There is an
458 adjustment period but unfortunately that is life and things change. My intension is to do a good job. I don't
459 believe it will have a negative impact on the surrounding properties.

460
461 JIM SMITH: Anyone in opposition or has anything further?

462
463 BOB ROSS: Robert Ross, two Holmes Street, I appreciate this family member having a situation in another
464 community and yes...we all want to live in the best place that we can. We are not saying that something
465 cannot be built there. What we are saying is to use common sense with the amount of units and the
466 accessibility to go in and to of this section. You can read off all the things you want about ins and outs and
467 what the Planning Board is going to do but if it gets beyond here, it is like a snowball going downhill. It's going
468 to get bigger and then we will be all up in arms and when it's all finally said and done, you know there is
469 something else again I don't know all the workforce housing but if you don't sell all the units and afterwards
470 are they rentable? We were told by the builder during the last meeting that an association will take over it and
471 possibly rent the units that won't get bought. But the character of the neighborhood, and yes I take pride in
472 saying that we do have one small section left and it's a big piece of property. Sixteen point four acres. There is
473 something that can be used better that goes with the character of the whole section that goes from the dance
474 studio into Derry. That is the point that I am trying to make more than anything. Again, I do thank you for your
475 time.

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477 JIM SMITH: Anyone else? The applicant has a final...

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479 JOHN CRONIN: We are not asking for a variance to increase the number of units, it has nothing to do with this.
480 We are not asking for a variance to allow workforce housing per say, it is allowed there as a matter of right.
481 Thank you!

482
483 JIM SMITH: At that point the public hearing is closed and we will now take this into deliberation.
484

485 DELIBERATION
486

487 JIM SMITH: We will take each case in turn. So the first case is the one about the acreage I believe. I think one
488 of the problems that we have...I am not sure everyone understands this. The State of New Hampshire is not a
489 home rule State. What that means is, cities and towns can only do those things which state law has specifically
490 authorized them to do. I just want to throw that out for everyone's information. So what we have to deal with
491 is this workforce housing law. In it...the applicant makes the point that the lot size cannot be used to limit this
492 type of housing through the state law. We as a town want to try to maintain open spaces but how...we are
493 limited by what the stated law allows a city or town to do. So that is one of the problems we have with this
494 particular variance. If we cannot prove there is a health and safety reason to justify the twenty acres versus
495 the sixteen point eight, it would be difficult not to give a variance on that issue because of the way the state law
496 is written. Any other comments or observations? Ok...let's go down through the areas...the first one, granting
497 the variance would or would not be contrary to the public interest because...it would not be. The public
498 interest is under the state law. The spirit of the ordinance would or would not be observed because...so we are
499 saying it would because again state law. Granting the variance would or would not do substantial justice
500 because...[pause]...well it would allow a use which the town has specifically addressed...yes, no,
501 maybe...Jackie...

502
503 JACKIE BERNARD: Granting the variance would do substantial justice due to the type of housing that it is and
504 what is required by the law, for us to consider. I would gather from the perspective...because this is workforce
505 housing...and how it has to...how it is perceived, how we have to perceive it. We have to follow the law.
506

507 ANNETTE STOLLER: I don't think it would do substantial justice on one hand and on the other hand...it's like
508 the two handed economist you know...on one hand it's this and on the other hand it's that. Yes we are
509 allowing the obligations of the law however if we did not grant it couldn't we still be allowing that lets say for
510 example one hundred and sixty four units they could put on the sixteen point four acres. In other words they
511 are not required to have twenty acres to put the housing on.
512

513 JIM SMITH: Well that's the variance we are trying to get. The basic requirement is to have twenty acres. They
514 are looking for a variance with this type of development on a lot less than twenty.
515

516 ANNETTE STOLLER: Correct...sorry I said it wrong. What is the balance...?
517

518 JIM SMITH: Between the twenty acres...what is the justification of the twenty acres and why...
519

520 ANNETTE STOLLER: Well we are not actually arguing that here tonight...
521

522 JIM SMITH: Yeah well...
523

524 ANNETTE STOLLER: What is the justification for the sixteen?
525

526 JIM SMITH: What the law says...[looked up in book]...what it says is lot size and overall density requirements
527 for workforce housing shall be reasonable. What we have to...what is the reason for this of the twenty acres.
528 We are not talking about how many units per acre or anything like that at this point...we have to figure out
529 whether or not it is reasonable to require twenty acres versus some other number.
530

531 ANNETTE STOLLER: Well as the gentleman who served on the committee said...it was an ambiguous number.
532

533 JIM SMITH: Which...
534

535 JACKIE BERNARD: Again tough, the wording is clear in the law that the regulations shall provide reasonable
536 and realistic opportunities. So reasonable and realistic, two very subjective words because what is reasonable
537 to you may not be reasonable to me. In realistic again this...this...the same...
538

539 ANNETTE STOLLER: I was there when the legislature was discussing this and this was one of the issues that got
540 flipped back and forth.
541

542 JACKIE BERNARD: Ok
543

544 JIM SMITH: I think the point I am getting at is if in the writing of the ordinance they said they want twenty
545 acres because they want twenty acres and it's not twenty acres because the...the land can only support a
546 certain number of units...is it reasonable or arbitrary.
547

548 JACKIE BERNARD: Correct...it's arbitrary. It may form what the gentleman described it was an arbitrary number
549 however it was reasonable for their...to them at that point in time. What we...it wasn't necessarily that it was
550 to meet any safety requirement, any septic requirement, any water requirement. It was not that it had a basis
551 only that to preserve the integrity of the Town of Londonderry versus city is what I am hearing. I guess if you
552 ask me granting the variance would be substantial justice in this case for workforce housing.
553

554 JIM SMITH: So you are saying yes...
555

556 JACKIE BERNARD: I am saying yes...on that point...
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558 JIM SMITH: The next one...the values...that's arbitrary....not every reasonably proven one way or another...
559

560 ANNETTE STOLLER: I think it would probably be supported by most appraisers.
561

562 JACKIE BERNARD: I agree with that, that would be supported by most appraisers because they are given facts
563 by the firm that hires them to give a report so if they say they are going to have x, y and z...and that the
564 community...development will be a certain standard, I believe that is how they come to their conclusion. Of
565 course something new is always going to be an improvement, it's just subjective whether or not the amount of
566 units there detract from the property values of the other...we have the people coming before us and what he
567 proposes to do and that he will do a very good job to improve property, I mean that's what he states. I mean
568 the Planning Board is going to police things that we can't and they are going to make sure things are done for
569 that reason so...again the letter was nice but it is form one perspective.

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ANNETTE STOLLER: By an appraiser it has to be supported by certain facts.

JACKIE BERNARD: We didn't get a complete analysis; it was a general letter you know.

ANNETTE STOLLER: Should we go on to the next one...

JACKIE BERNARD: Well it is reasonable that...that the surrounding properties will benefit from a...development of that piece of land and...what we struggle with is the workforce housing definition and the residential definition and how the two are so abutting to each other versus if it was just all businesses now, we would have a whole different discussion here. So...would it bring...would the values...would it be diminished or not be diminished. I see that it would not diminish it. I see some industrial type places here. We have residential properties on the other side of this development. So, let me restate it, what is back there and what is presented on this...we have a mixture on a couple sides and yes we have some residential. I didn't see anything that would help me decide that it would diminish the properties of the residential areas. I didn't see anything that I...I could conclude that it would actually diminish all their values. Unless I am missing something...Richard, it's rated AR-1 so what does that tell us in terms of residential?

RICHARD CANUEL: That is the agricultural residential zone which allows a multitude of residential uses...single family, multi-family, duplex, anything that is residential.

JIM SMITH: It is a compatible use. It's got to be something that is going to be...probably multiple buildings of some sort is what you are going to see on his property.

JACKIE BERNARD: It would not diminish the properties because of what I see on the back side.

JIM SMITH: In some ways it will be a transitional use.

JACKIE BERNARD: Exactly...correct, because of what we are seeing.

JIM SMITH: Ok, do we have a consensus of where we are at.

JACKIE BERNARD: Well I have to weigh in that I don't believe it would diminish.

JIM TIRABASSI: I don't believe it would diminish the properties. Because at some point someone will do something that could be much bigger.

JIM SMITH: Ok...number five...on five they either have to go with A1 or A2 so either one of those.

ANNETTE STOLLER: I would go with A2 because it is a reasonable use.

JACKIE BERNARD: It is a reasonable use. I agree it is. Due to the surrounding tracks of land.

JIM SMITH: So it is either A or they go to B. Is it a fair and substantial...?

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JACKIE BERNARD: It is a fair and substantial relationship between the general public and the purpose of the ordinance.

JIM SMITH: Ok...[shuffling of papers]...I will entertain a motion.

JACKIE BERNARD: Mr. Chairman I would like to make a motion to grant variance 9/17/2014-3 to allow workforce housing development on a parcel with sixteen point four acres where twenty is required.

JIM TIRABASSI: I second that.

JIM SMITH: All those in favor.

JACKIE BERNARD: Aye...

JIM SMITH: Aye

JIM TIRABASSI: Aye

ANNETTE STOLLER: Aye.

[Pause and shuffling of papers]

JACKIE BERNARD: Mr. Chairman we have a 4-0-0 to grant 9/17/2014-3.

JIM SMITH: Ok now we are deliberating the second case.

JIM TIRABASSI: Right.

JIM SMITH: Which is...what is the second case?

JIM TIRABASSI: Number of buildings...

JACKIE BERNARD: Yup...workforce housing development to build fourteen multi-family buildings where only three buildings where only three buildings are permitted per year.

JIM SMITH: I think the key to this is in the three buildings they apparently figure on three, sixteen unit buildings. In this configuration we are not building sixteen unit buildings. It proposes for either building with either six to seven units. I think if we go along with this we should restrict it to a total of forty-eight units per year versus the number of buildings.

ANNETTE STOLLER: It may be an access of what they would do anyways.

JIM SMITH: Yeah they may build less. I think that is the intent to be no more than forty eight units.

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JACKIE BERNARD: So that would be our restriction. So the restriction would be no more than forty-eight...

JIM SMITH: Well we still need to go through the...

JACKIE BERNARD: Right...I just want to go through the...forty-eight units per year.

JIM SMITH: Yeah as a max. I think a lot of the logic we went into on the first variance...

JACKIE BERNARD: [Chuckling]...it all applies again.

JIM SMITH: it is pretty much applicable to the second.

JIM TIRABASSI: This is really just a matter of sizing and building nothing else really. The sizing of the buildings, like three as opposed to six.

JIM SMITH: Yeah...

JIM TIRABASSI: Everything else is the same.

[Pause]

JACKIE BERNARD: Mr. Chairman I would like to motion that we grant the variance for 9/17/2014-4 to allow workforce housing development to build fourteen multi-family buildings where only three buildings are permitted [per year with the restriction that it shall be a maximum of forty-eight units per year.

ANNETTE STOLLER: I will second that.

JIM SMITH: Ok I got a second...all those in favor...?

JACKIE BERNARD: Aye.

JIM SMITH: Aye.

JIM TIRABASSI: Aye.

ANNETTE STOLLER: Aye.

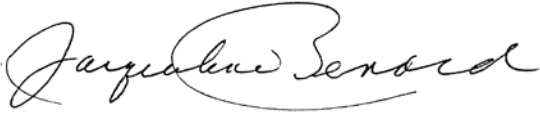
JOHN CRONIN: Thank you.

JACKIE BERNARD: Mr. Chairman we have a 4-0-0 vote to grant case number 9/17/2014-4.

RESULTS: CASE NO. 9/17/2014-3: THE MOTION TO GRANT CASE NO. 9/17/2014-3 WAS APPROVED, 4-0-0.
CASE NO. 9/17/2014-4: THE MOTION TO GRANT CASE NO. 9/17/2014-4 WITH RESTRICTIONS WAS

702 APPROVED, 4-0-0.

703
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705 RESPECTFULLY SUBMITTED,

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710 JACKIE BENARD, ACTING CLERK

711
712 TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

713
714 **APPROVED JANUARY 21, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY ANNETTE STOLLER AND
715 APPROVED, 5-0-0.