



TOWN OF WARNER

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**Planning Board Meeting
Town Hall- Lower Meeting Room
Monday, August 29, 2022
7:00 PM**

I. OPEN MEETING at 7:05 pm.

ROLL CALL:

Board Member	Present	Absent
Andy Bodnarik	✓	
Karen Coyne	✓	
Ben Frost (Chair)	✓	
James Gaffney	✓	
Don Hall (Vice Chair)	✓	
Ben Inman		✓
Sam Bower (Select Board) Stand in for Lois Shea	✓	

In Attendance: Janice Loz – Land Use Administration

Also present: Ben Osgood – Ranger Engineering, Mike Quinn and Adam Quinn, Comet, LLC., Jaime Hage, Attorney – Rath, Young, Pignatelli.

II. NEW BUSINESS

A. Site Plan – Comet, LLC.

- Applicant:** Comet, LLC. – Adam Quinn
- Owners:** Comet, LLC., Mike Quinn, Manager
- Agent:** Ranger Engineering Group, Inc., Benjamin Osgood, Jr., PE
- Address:** Route 103
- Map/Lot:** Map 35, Lot 4-3 – frontage on Route 103
- District:** INT & C1
- Description:** 24-unit apartment building

Chair Frost made a statement regarding what would happen that evening. He said there were a lot of people present at the meeting in person and on Zoom. The Planning Board will determine if the application before them is sufficiently complete. If this is determined as complete, the Board will move forward with the public hearing. If it is not considered complete, the Board will reject it.

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The Board can then approve, approve with conditions, deny or continue the meeting onto another date. He understands that some people feel that the Planning Board is rushing this through, but that is not the case. He regards this as good customer service, as the applicant has a pressing need to move forward to be able to apply for federal aid in the development they are proposing. The applicant now has the opportunity to have their application heard in a timely fashion; the Town does not have to approve it that evening; they will make a decision when the Board sees that everything has been met that is required by the Town. The applicant's deadline is not the Town's deadline; they have up to 65 days to make a decision after accepting the application as complete.

Chair Frost asked the Board to look at the application and review it for completeness. He said that he has spent a lot of time reviewing the application and there was correspondence between himself and the applicant, which was included in the information before them.

Sam Bower asked about the 100-year flood elevation line. He asked if the site plan showed the average elevation line or the 100-year line. Chair Frost said that the elevation of 421' is the base flood elevation. This was aligned with other development in that area, such as the Dunkin' Donuts. That was the same elevation used.

Chair Frost asked the Board to go through each page of the checklist to determine if the application was complete. The board was divided into two groups to go through the pages together. The groups went through the pages amongst themselves and determined if each item had been tended to. (This discussion was inaudible due to several people speaking at once.)

Chair Frost determined that one item that was missing was accompanied by a waiver which would be part of the application. It had to do with a decision made by the ZBA and presented to the Planning Board by an officer of the court. Chair Frost said one of the abutters on the list did not receive the notice. Janice said that specific abutter that did have a notice sent to them but it was returned to the Town. A waiver for this has been received. Janice said that the abutter had not been included on the list provided to her. She noted that the Spinney family was not on the list but she added them as well, and sent a notice. Another abutter was sent a notice to the address they had on file and it was returned to the Town.

Chair Frost said that the Planning Board had reviewed the materials submitted on August 8th and has determined the application to be complete.

It was moved by Andy Bodnarik and seconded by Don Hall to accept the application as complete.

Discussion: Chair Frost said that the lack of a drainage study was the reason the Warner River Committee asked that the application not be accepted as complete. James said they haven't addressed things like a sprinkler system; would that fall into the application or something they would request down the road. Chair Frost said that is a building permit issue. James thought it may fall into their discussion that evening as he had questions as to whether the Town and Fire Department have the capacity to respond to a site this large with their existing infrastructure. There are different standards and requirements depending on whether a building is sprinkled or not. Chair Frost said they can ask the applicants and also consult the Fire Department.

Chair Frost called for a vote on the motion. **Vote Tally: 6 – 0. The motion to accept the application was approved.**

Chair Frost said that now that the application has been considered complete, they could then begin a formal review of it. He welcomed the applicants to begin with their presentation.

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Ben Osgood introduced himself and said they would like to build 24-unit apartment building just east of the new Dunkin' Donuts building. They originally had a plan that used the Dunkin' Donuts property to access the property in question. Since then, they have been working with DPW and others in the town. They showed a map with the property line outlined.

The building will be three stories and a mix of one and two-bedroom units. It adheres to the height requirements of the Town. The plan he showed illustrated the buildable property and the wetlands. There would be an easement of 10 acres to protect the Warner River. He didn't think it was appropriate to suggest putting paths or trails in this area. As a result of the comments they have heard, there is a driveway across from North Road. DOT determined that based on the size of the original property that it was entitled to three driveways. Although they wanted to access as much of the site from the main driveway that has already been constructed, they have the right to create another driveway, which would be approved with the proper permitting.

The roadway has a 5% leveling area and changes its way to a 10% slope and meets the subdivision requirements. It is 25' wide for the most part but one area is 20' to keep it out of the wetlands. A fire truck can get in around the building but cannot make it out in one sweep, they would need to make two turns.

The structure will not sit way above the road; it will be visible from the traffic circle but will be shielded by trees. There is a deadline to receive financing through the State for workforce housing. They put in drainage plans but the full drainage report has not been done due to a lack of time. This would require more time and any approval issued would be subject to getting the AOT permit. The AOT bureau is much more stringent than the Town's regulations. This is the same as the DOT where they will get a traffic study done and determined with a traffic memorandum. The driveway meets the conventional requirements of the State.

Mr. Osgood said the traffic engineer said that multi-family units have less of a parking need than single family units. The wetlands issues have to go to the State. With their plan, the wetland impacts are far less. They will have to build a wall along the driveway and there will be some minor impacts to the wetlands. The sidewalk along the driveway to the roadway needs to be connected in some way. This will be determined by DOT.

Jamie Hage is an attorney on behalf of Comet LLC to present the project. He said that the Town of Warner workforce housing zoning ordinance, passed in 2010, was to adopt workforce housing due to a mandate. The Town of Warner, DOT and the State recognizes the importance and benefit to the community and its citizens in the establishment of workforce housing. That is what they are trying to accomplish. The proposal will meet all the requirements of affordability under the zoning ordinance. It will comply under the ordinance for income verification. They propose a deed restriction, as a draft, but they wanted it as part of the application. The restriction will be filed with the Merrimack County Registry of Deeds. Both workforce housing and market rate units will be included in this complex. The only way workforce housing becomes economically viable for a developer is to have a combination of workforce housing units with market rate units. Half will be workforce housing for the next 30 years. Three additional units will be workforce housing for the next 10 years. The remainder will be market rate units.

Attorney Hage said the practicality for them is that without the availability to get the \$3 million grant money (by meeting the deadline) is to promote workforce housing development throughout the state of NH. It is essential and is needed. This is for middle-income people being able to afford good rental housing in Warner and in the State.

Attorney Hage said the law requires the encouragement of "reasonable and realistic opportunities for the development of workforce housing." That definition includes multi-family housing. The restrictions and the regulations can't be so restrictive that it impacts the cost and viability of doing

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a project in this instance. They want to meet the requirements and he feels that they have done that. He said that the Planning Board has the right to waive certain requirements as long as it is done without jeopardizing health and safety. Attorney Hage cited: 14-A Workforce housing is the citation where things can be waived by the Planning Board as long as they do not sacrifice public health, safety and welfare. He said that the Town's zoning ordinance set forth these requirements to be able to allow this type of housing in the town.

Attorney Hage said a building of this size is not required to be sprinkled, although he thought the builder would sprinkle it anyways. The waivers mentioned earlier would also all be addressed.

It was noted that the application said there were 24 units of workforce housing. She said after Attorney Hage spoke, it appears that it will be mixed housing; not all 24 units would be workforce housing. She thought this was an error on the application. Attorney Hage said when going to the ZBA the application was for a special exception for a 24 unit building with workforce housing. The development does not need to be 100% workforce housing. The funding they are trying to get asks that there are 24 units to be built, which can be mixed income.

Sam asked if they had the wording from the Special Exception from the ZBA. Chair Frost said that the Special Exception did not refer to mixed income units. The Zoning Board granted the request for a multi-family workforce housing building on the property; there is no mention of mixed income. Chair Frost said this use is allowed in the C-1 zone.

Andy said there was a change in the workforce housing regulations adopted in 2010. The multi-family section from 2012 is what should be referred to. He thought the applicant should refer to the 2012 amendment in his application and not the 2010 regulations.

Chair Frost said he would have the information he was presenting that evening put on the Town's website for all to see. Regarding the mix of units, he was correct: Article 14a calls for a density bonus in exchange a certain proportion of units must be kept affordable. That is for single family and multi-family development. In 2021 Town Meeting changed the zoning ordinance to add a new use: multi-family workforce housing. The density bonus does not apply because multi-family workforce housing is exempt from other provisions in the ordinance that address density. This was a new use and is in the Use Table. There is nothing in their ordinance that says that multi-family workforce housing can be anything less than 100% workforce housing. Multi-family housing is different than multi-family workforce housing.

Attorney Hage said the Town's zoning ordinance doesn't specify a percentage. If they have an apartment complex with a combination of workforce housing and market rate housing units, that doesn't mean it isn't workforce housing because it isn't 100%. Why would the general requirements under subsection D talk about the building permits and certificates of occupancy refer to giving priority to workforce housing over market rate housing in the development? Why would this requirement be there that recognizes a combination of both of these types of units? Chair Frost said that language would be applicable in developments where a mix of both types of housing exists. This was his take and he needed the Board to make a decision on this for themselves. He said the Zoning Board took no position in the notice of decision. Attorney Hage said that the application with the Zoning Board referenced the plan to include mixed income units. If the Town is now going to say that it isn't allowed, it would be going against the State statute and the Town of Warner's own ordinance.

Sam asked what would make this development economically feasible? It was noted that the workforce housing unit for 1 bedroom would be \$977/month and a 2 bedroom would be \$1,200 and both include utilities.

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James said the ZBA approved a special exception for the specified use of multi-family workforce housing. That's it and is consistent with the proposed use in the application. Unless he is mistaken, if there is a use that is other than the ZBA approved, there needs to be an additional decision by the ZBA or a condition of approval. Chair Frost agreed. James said that the application with the Planning Board states clearly 24 units of workforce housing. That is not what the applicant is proposing.

Attorney Hage believed that including some workforce housing in the development counts as it being workforce housing. Chair Frost said that was one interpretation.

Andy said he was disturbed to references to Article 674:59. There are issues the town has to deal with such as public safety, traffic safety, etc. It isn't an unlimited grant and the Town still has some ability to deal with those issues.

Chair Frost said they could accept the applicant's presentation, they could go with what he has written, or they could delay the decision and get legal counsel on the question. Andy said there were legal citations in the letter they received from the attorneys. The board hasn't had a chance to look at that yet. He said there are too many legal issues and felt they needed legal counsel before making a decision. Don agreed. Karen said she would be inclined to follow Chair Frost's interpretation. Sam agreed with Karen. He said the Chair of the ZBA referred to the units only addressing workforce housing, again and again. Sam said if the Board wanted to go to legal counsel, he would agree as well.

Chair Frost said another issue is duration of affordability. Attorney Hage said the ZBA had a deliberative session to discuss the mix of units. They consulted counsel and then voted to grant the special exception. Chair Frost said they would set the duration of affordability and the mix of units issue would be set aside for now to deliberate further on the application.

Andy said the lawyer sent a letter requesting a waiver of the site plan review. Attorney Gage said he wasn't requesting the entire site plan review be waived, just parts of it. He wasn't making any specific waiver requests. His reading of this waiver to the "normal" site plan review substantiates the adoption of the article.

James thought there should be a discussion about whether or not the development falls under consideration for regional impact. Chair Frost agreed and said this had to be done by law. He referenced RSA 36:54-58 which says that the Planning Board is considered to be a local land use board and is presented with an application that may have impact beyond the town's boundaries. The board is obliged to notify the regional planning commission and abutting towns to comment as if they were abutters. They did this previously with the shooting range and with Dunkin' Donuts.

Chair Frost said that relative size or number of dwelling units as compared to existing stock may warrant it to be considered a project of regional impact. A very large development in a very small town would be a big impact. This proposal is a relatively small impact.

Don didn't think they should deviate from their past experiences and they should stick to their protocol. They have to do what's right for the community. Karen agreed with Don. Sam agreed; he wasn't part of the deliberations with the Dunkin' Donuts but this seems to have some of the same and even more pressing issues that would determine to be of regional impact.

It was moved by Don Hall and seconded by Andy Bodnarik that the Board find this application to be of a development of regional impact, pursuant to the guidelines stated in RSA 36:54-58.

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Discussion: The Chair noted that if the board votes in favor of this motion, the Central NH Regional Planning Commission will need to be notified, as well as the affected neighboring municipalities (Bradford, Hopkinton and Sutton). The public hearing would need to be continued to allow for information from the municipalities and the RPC.

Chair Frost asked for a vote on the motion. **Vote Tally: 6 – 0. The motion to finds the application within the considerations of regional impact, was approved.**

James wanted to suggest that the departments in the town be consulted for comment on this project. He wanted to reach out to the Kearsarge School District to ask how they are currently handling bussing and would there be anything different based on the plan provided. Chair Frost thought this was a reasonable request. He thought perhaps the departments could provide a written response in lieu of attending in person.

Chair Frost said that 14 days prior to the continuation of the public hearing, the local land use board has to notify the municipalities and the RPC and provide an opportunity to comment and speak as if they were abutters, they get written comments. Therefore, the next public hearing cannot reconvene any closer than 14 days from the day the notices are sent out.

Chair Frost recognized that this delay would not allow the applicant to apply for the funding they had hoped for. He asked the applicant which date they would like to meet again on. Attorney Hage said there were legal issues that needed to be taken care of regarding the mix of housing units. He wondered if they could get legal counsel opinion on the topic sooner than later. They don't want to continue wasting the Town's time if they cannot develop this housing under the terms they had hoped, which was not 100% workforce housing. Chair Frost said they could ask for legal counsel consultation, which did not need to be noticed. Following the consultation with counsel, a meeting of the Planning Board would be held, properly noticed, to make a decision, using the advice they have been given.

Wednesday, August 31st at 7pm was the next evening the room was available to meet. This was penciled in for a continuation of that evening's meeting. Chair Frost would try to set up a meeting with legal counsel prior to the Wednesday evening meeting.

Chair Frost opened the meeting to the public for comment.

(This part was extremely hard to hear. Comments are as best as I could decipher)

Christina (last name?) on Kearsarge Mountain Road said that the 24 units of workforce housing are proposed but if there is no legal contract, they can't do it.

Kathy Schoonmaker from School Street. She said asked if there was anything in the plan that would prevent them from going into the wetlands. The applicant said that this is listed on the plan.

Michael and Giselle Bogardus (via zoom) said without all the information presented, how will they know how the schools and other infrastructure will be impacted?

Henry Garcia from Kearsarge Mountain Road said his major concern is a traffic load imposed on this part of town. He was picturing increasing traffic. If they have 24 units, an increased amount of people will be needing to cross the road, which will create a monumental traffic jam.

Ken Milender, West Main Street, is the Chair of the Warner River Advisory Committee. Humans and mother nature can co-exist with enough time to plan and engineer. They have a number of issues with the application. They would like to get details from the water precinct and the other departments whether this would work. They also don't think the storm water filtration system will be able to keep up with this kind of development. They don't want the groundwater to be polluted.

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Kathy Schoonmaker from School Street said rent for over \$900 for a single and 1,200 for a double. How do they market those? The applicant answered that 15 units would be workforce housing. 9 would be market rate. Market rates is \$1,963 for single and \$2,356 for a two-bedroom unit.

Chris Ross, 157 West Main is an abutter. He said his major concerns was that this was happening quickly. He was worried about the noise, the traffic and the lighting. He is also worried about excess water coming onto his property. He thought this many new houses would but a strain on the water supply at the water precinct.

Paul Lakevicius asked who will be keeping track of who can rent these and if they are vetted to make sure they can afford living there. Chair Frost said the applicants are the owners of the property. They have a right to propose development just as any other property owner does. The Planning Board would establish the mechanisms to insure that the units are occupied by people who need them. This would be administered by the select board per the terms of the zoning ordinance. There would be a qualification of tenants and an annual certification of the property owner. The applicant said a requirement in the lease would be an income verification on an annual basis. If they don't qualify, the lease will not be renewed.

Karen asked if there was a limit on how many adults could live in one unit? Chair Frost said he didn't think the Town had a standard on that. Karen said the amount of people would determine the amount of water being used.

Trisha Angelli (?) said there is lots of residential land and wondered why they would want to put this housing in this particular zone. Chair Frost said the ZBA already made a decision on this and the Planning Board cannot change their decision. James added that Town Meeting voted to adopt that specifically, work force housing is permitted as a special exception in the commercial district, among other uses. He encouraged everyone to look at the uses permitted in the ordinance.

Christine Frost, asked to have a definition of workforce housing and s subsidized housing. Chair Frost said subsidized housing doesn't have a formal definition. It has some public subsidy to it; some public investment. RSA 674:58-61 has the definition of workforce housing. In some it is explained as housing that is affordable for a renter family of 3 making up to 60% of the area median income. Or for purchase it is housing that is to purchase for a family of 4 making 100% of the median income. The term affordable is also defined, which is no more than a 30% cost burden for a family living in one of those houses. This gets one to rent limits and maximum purchase prices. Andy said all the definitions for these things also appear in the town's zoning ordinance.

Sam asked what average costs are for rentals in Warner. Chair Frost said the paper or Craigs List would give an indication. Also, a realtor could be consulted.

Rebecca Appari of Newmarket Road asked how would be the landlord for the property? Also, \$2,300 for a 2 bedroom seems steep to her. What impact would that have on existing rentals in the area? Chair Frost said anyone can charge what they want. The Town cannot control the ownership of the property. They can look for an agent for the property so the Town will know who to call if there is a problem.

Alice Chamberlin, Birch Hill Road. She said it seemed that the applicant is asking for approval prior to a number of other state approvals. What say would the town have in the other applications regarding the traffic, watershed and driveway? Chair Frost said under state law the board cannot delay the decision due to grants not given from the state; they have to grant a condition of approval. If these change, the applicant has to come back before the board. The Town and State have a lot of the same requirements. They have up to 90 days to review this application to make a decision.

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Alice asked if federal money from the State was being pursued. She wondered if there were other regulations that they had to adhere to in order to use these funds. Chair Frost said he wasn't sure and did not really care. This is a question of timing.

The applicant said that the conditions of approval were granted from the ZBA for the things they have waivers on.

Alice asked that the record be kept open for written comments. Chair Frost said it would be.

Bob Bower followed up on what Alice said. He asked about the applicant's process. He thought they needed more time to review the things that are put in front of them. He said the median income of the residents of Warner goes down when they do the master plan. The other towns increase. This coincides with the development at Exit 9. None of the money generated from those businesses stays in the town. The median income will continue to decline.

It was asked what this would do to the property taxes. Chair Frost said that the development would be subject to property taxes. It would also depend on how many children would come as a result of the development.

Paul Lakevicius, was thinking about the amount for the rent. What happens if the apartments are not rented. Anyone can sell their property, so can the limits on how many units are workforce vs. market price be negotiable? Chair Frost said if the cost is too high, they will have to reduce the rate to attract tenants. If the apartments are vacant, the owner of the property doesn't get income. They still have to pay the property taxes. The requirements of affordability "run with the land." From owner to owner, the conditions stay the same until an owner comes to the board seeking a change, relief from, or an expiration of the terms. After 30 years the terms expire.

Jody Sloane asked if there is a reasonable expectation that the building would be subject to inspection to comply with HUD regulations. Chair Frost said the money the applicant is looking for is not HUD money; it comes from the US Treasury and there are very few restrictions on it.

Henry Garcia asked how many of these projects have the developer done and where? Chair Frost said this wasn't relevant. He said they don't get into the financing of projects and these details.

The public hearing was recessed.

The questions defined earlier in the meeting they will pose to legal counsel prior to Wednesday. They will also be notifying the regional planning commission and the three affected municipalities identified by the Board.

James thanked everyone for showing up and participating. Chair Frost agreed and thanked those on Zoom as well.

Attorney Hage thanked everyone for their comments that evening.

The meeting and hearing would be continued until Wednesday, August 31, 2022 at 7pm at the Town Hall, Lower Meeting Room. A Zoom link will be published for those who wish to join in that way.

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III. ADJOURN

The meeting was adjourned at 9:45 PM to Wednesday, August 31, 2022.

NEXT MEETING: Wednesday, August 31, 2022 at 7:00 PM in the Lower Meeting Room - Town Hall

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of Warner