

UNAPPROVED MINUTES OF AUGUST 31, 2022



TOWN OF WARNER

P.O. Box 59, 5 East Main Street
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
Email: landuse@warner.nh.us

**Planning Board Meeting
Town Hall- Lower Meeting Room
Monday, August 31, 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)	✓	

In Attendance: Janice Loz – Land Use Administration

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

I. OPEN MEETING and ROLL CALL

II. UNFINISHED BUSINESS

A. Continuation of Public Hearing of August 29, 2022

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

UNAPPROVED MINUTES OF AUGUST 31, 2022

The Chair noted this meeting was a continuation of the Board's consideration of the application of Comet LLC., for a site plan review for 24-units workforce housing project. This project is located on Route 103 opposite North Road to the immediate east of Dunkin' Donuts in the vicinity of Exit 9 off I89, Map 35, Lot 4-3 and the Commercial and Intervale district. The Board is continuing the discussion from Monday, August 29, 2022 which was recessed for the purpose of consulting with legal council on a couple of questions. One of the questions being the duration of affordability of workforce housing units in a workforce housing development that is being purposed. The second question is for multi-family workforce housing in these districts, Commercial and Intervale, what is the requirement of the proportion of the units in the development to workforce housing. The Chair stated they have a letter from the applicant's legal counsel with their interpretation of the zoning ordinance. On Monday, the Chair distributed a letter with his interpretation of the zoning ordinance. The Chair said this document will be posted to the web site, this evening.

The Chair stated the board met in a non-public meeting a short time ago to discuss advice of legal counsel. The Chair proposed his written statement dated August 29, 2022. The Warner Zoning Ordinance multifamily workforce housing in the C1 and the INT districts the following statements were submitted with explanations. "1. *Multifamily workforce housing must be perpetually affordable and 2. Multifamily workforce developments must be 100% workforce housing.*" The Chair stated that is the proposal for the Board's consideration and asked if a board member would like to make a motion.

Don Hall made a motion to approve the proposed statement as read into the record by the Chair. Andy Bodnarik seconded the motion. Discussion: Sam Bower said this seems to be the interpretation of our Zoning Ordinance and it is not necessarily the opinion of those on the board. He sees many advantages to having folks of mixed incomes living together. He thinks by allowing people that are more economically fortunate to be neighbors to those who are less economically fortunate creates opportunities for them to realize they are bound together. Although, from his perspective he thinks it would be a wonderful opportunity to have that happen although, this is the interpretation of the ordinance. He does agree with the interpretation of the ordinance as written. The Chair thought Sam's statement was well stated, and agrees with his opinion of the benefits of mixed income developments.

The Chair called for a vote on the motion. **Voice Vote Tally: 6 – 0.** The motion passed and affirmed that multifamily workforce housing must be perpetually affordable and multifamily workforce developments must be 100% workforce housing.

The Chair said this decision has some implications, as he addressed the applicants the Quinn's and their Attorney Jamie Hage and said he would be inviting them to discuss how they want to proceed with the application. The Chair said the Board has taken this position and making a clear interpretation of the zoning ordinance, so that if the applicants want to appeal, they can. Even though, this Board has not made a decision on the application itself. The Board has made a decision interpreting the zoning ordinance. So, in a jester of fairness to them and everyone else with an interest in this application we wanted to put that decision forward, so the applicant will have something to appeal if they want to. The Board has heard representations from Comet, LLC., that making this decision could in effect kill the project. If they want to appeal the decision, they can. How they appeal it is subject to question. It is possible that it could go to the Zoning Board of Adjustment (ZBA) as an administrative appeal. This is also the Board's interpretation of Article XIV-A of the zoning ordinances which is adopted as an innovative land use control, adopted pursuant to RSA 674:21. Appeals to such ordinances, these so called innovative land use controls when those ordinances are administered by the Planning Board as is the case here tonight are appealable only to superior court not to the ZBA.

UNAPPROVED MINUTES OF AUGUST 31, 2022

Possibly the applicants if they wanted to fashion some sort of appeal that would, in the ZBA's view, be within their jurisdiction. That is two possible courses of action, he does not need to advise the applicants on this they are ably represented by a competent legal counsel. The Chair is just informing folks attending the meeting what some of the possibilities are.

Sam Bower asked if another possibility would be to go through with the application and get it approved as only workforce housing and sometime in the future seek a variance through the ZBA. So, there would be two separate decisions, the variance would allow for the mixed market rate and workforce housing units. The Chair said they could do that now or later. The Chair said they would have to let the Board know whether they are continuing with its review or waiting. If they choose to appeal to the ZBA as an administrative appeal and it is up to the ZBA to decide whether or not it is within their purview of jurisdiction or go to superior court, the Board will be looking to the applicant to tell them how they want to continue. The preference may be to wait while the case proceeds so not to waste everyone's time.

Ben interjected that if they don't give us direction tonight we have to assume they want to continue. James said so there is a window in which we need to notify abutters as per the regional impact study and 14 days before our next scheduled meeting in October. The Chair said their regular meeting in October is on the 3rd. This gives them ample time to notify the Regional Planning Commission. The notice goes out by registered mail and the Regional Planning Commission needs a whole plan.

The Chair addressed one of the issues raised by Attorney Hage in his letter to the Board on August 26. The Chair had discussed the statutory requirements in the work force housing law which Attorney Hage accurately relates to in his letter. The Chair said he believe this letter is on the web site as part of the case files. Attorney Hage talks about the workforce housing law requiring municipalities that exercise the powers delegated to them by the legislature to adopt zoning ordinances, subdivision regulations and site plan regulations and the land use regulations. Under that law they must provide a reasonable and realistic opportunity for the development of workforce housing that is economically viable which could readily be construed as profitable to build. If it is not profitable for a developer than it is not viable. The Chair said they have heard from the applicants that given the Board's interpretation of the ordinance; the project is in effect not economically viable. The Board has not been presented evidence of that. Under the workforce housing law the applicant is entitled to have regulations and a process that yields workforce housing that is economically viable. Our ordinance, however, requires in our view 100% workforce housing in a multifamily workforce housing development. It would be up to them to demonstrate that it is, in fact, economically unviable. The Board could in the face of such a claim ask to see the developers proforma, which is their numbers that are the basis of their conclusion that it is economically unviable. The Board could submit that report to a third party independent review. Someone who is qualified to review construction costs, that review would be paid for by the applicant. The Chair said those are the possibilities.

The Chair continued to say if in fact they are able to demonstrate that the project is economically unviable and we agree, the problem is there is nothing in the zoning ordinance that gives the Planning Board the power to vary the terms of the zoning ordinance in recognition of that conclusion which is a problem. The Chair does not see the Board has the ability to give the applicant the relief they would be seeking. The applicant could seek a variance application to the ZBA, or make a claim in superior court or to the housing commission. These are some options that the applicant might pursue.

Andy asked whether or not the board has the ability to waive parts of the zoning ordinances. The Chair said there is in Article XIV-A Workforce Housing a provision that allows the Planning Board to

UNAPPROVED MINUTES OF AUGUST 31, 2022

vary lot sizes. Andy said he was more concerned with parking requirements and locations. The Chair said he would have to look at it more carefully. Andy wondered about this because the zoning ordinance has a section on parking requirements and mention of the location of handicap parking. The Chair said unless there is something specifically that allows the Board to waive or vary those terms then no the Board cannot do that. The Chair said Article XIV-A.C.2. the site plan or subdivision plan that will guarantee a designated percentage of dwelling units reserved as workforce housing may be approved with an increase in the density of the site and a reduction in the minimum site frontage as is set forth in the appropriate section of the zoning ordinance. The Planning Board may allow a reduction of the minimum lot size to accommodate the increased site density. That is triggered by the density bonus provisions and that is the only thing the Chair thinks the Planning Board has the right to vary with regards to workforce housing in the zoning ordinance, which is the lot size to achieve the site density. Otherwise, there is no reference to the Board being able to vary the mix of units between market rate and workforce housing.

Andy referenced Page 14 of the ordinances, Article XI.E.1. which discusses parking and circulation and their location within the front yard of the building. When we can increase the density does that include the location. Sam said so those parking spaces that are located on the front of the building are not allowed to be there, except for the handicapped spaces. Andy said, yes, and he didn't know if these provisions could be waived. The Chair said these provisions were adopted in response to a development that was proposed in this neighborhood two years prior. Andy said this particular section was amended in 2006.

The Chair invited the applicants to speak. Attorney Jamie Hage said on the issue of viability, is it the Board's position that given its interpretation on duration and percentage that is 100% workforce housing and in perpetuity. Jamie said of course they take issue with that interpretation. He asked if they can prove it is economically unviable then it is the Board's position that they cannot approve a site plan with less than 100% and not in perpetuity. The Chair said, yes. Jamie said even if 100% workforce housing is economically unviable which he submits it is, it is the Board's position that they are powerless to do anything to vary that. The Chair said that the Board is not saying the project on its face necessarily leads to economic unviability, that is a matter of proof for the applicant to offer. Jamie said even if they were to prove it was economically unviable. According to the Planning Board's interpretation of the statute the Board's cannot vary from that interpretation even if the applicant to prove economic unviability.

The Chair said what they interpreted was the zoning ordinance, not the statute. The Board's interpretation of the zoning is that a multifamily workforce housing development proposed for the Commercial and Intervale districts must be in perpetuity and must be 100% workforce housing units.

Jamie said then if evidence of economic unviability is presented, based on that interpretation what can the Planning Board do? The Chair said he does not see a remedy in the zoning ordinance that allows the Board to vary the ordinances terms in recognition of that conclusion, if it is proven. The Chair added meaning that it would be suitable for a variance. Sam said the Planning Board does not have a right to do that, but the Zoning Board could give a variance when a hardship is proven. The Chair said if Jamie can find something in the zoning ordinances and can demonstrate it to our satisfaction, they may be open to it.

Jamie said they have submitted in the record of August 26, 2022, as well as a letter submitted today, August 31st. Included was a letter to the Town's Counsel dated August 30th, which clearly sets forth our position and why the Board's interpretation is wrong. Also, an Affidavit from Mr. Michael Quinn

UNAPPROVED MINUTES OF AUGUST 31, 2022

who has analyzed the financial viability based on the costs and the rental income from this project. Jamie wanted to make sure all that documentation was part of the record.

The Board stated they had not received the August 31st correspondence. Jamie said it was submitted via email to Janice in the Land Use office. Janice checked her email, which is also projected on the television screen in the meeting room. It did not show receipt of the email from either Jamie Hage or Cassandra Moran. Attorney Hage will forward the email to Janice, he stated the email was originally sent to the Land Use office at 3:53 PM today, August 31. Adam said he thinks it was sent to the wrong email address. Janice confirmed that she received the email, which was also reflected on the video screen. Sam asked if they could receive the letter after the meeting has started. The Chair said if the request is that the Board consider something at a meeting then it should be received by noon on the day of the meeting. The Chair said they have not seen this document and don't have the capacity to review it right now.

Jamie asked that it be made part of the record. These letters were also presented to the Town Attorney who indicated to Jamie today that he had no availability to discuss the matter. Jamie asked that the affidavit of Michael Quinn and their letters be submitted as part of the record. He commented that based on the Board's interpretation it probably isn't going to change their position.

Sam said they haven't seen the letter; the Board has already voted on their interpretation of the zoning ordinance. If the applicant were to wish to continue their application, then we could receive the letter as part of the record. Sam said they could receive it by tomorrow at noon, but, potentially not for tonight's meeting. The Chair, agreed. For the Board to entertain this information they need time to review it, at a future date.

Jamie said that continuing this so they could consider the submission isn't going to make a difference to this Board. But he thinks it is important that it be accepted as part of the applicant's submission as part of record. He asked that the document be part of the record for the purposes of an appeal to the superior court. The Chair said it is not part of the record tonight. Because this Board cannot adequately consider what Attorney Hage has submitted tonight, and they need time. Attorney Hage said a superior court will consider it. The Chair said it is a complex legal matter and they do not have any time to review it without the opportunity to consult with Town's legal counsel. If the applicant chooses to appeal they have no basis for having any discussion on what was just submitted to the Board. Attorney Hage responded that the Town's Counsel had time to consider the letter of August 26 and their letter of August 30th before meeting with or consulting the Board. The Chair said the Board will not discuss consultation with their legal counsel. Attorney Hage said he is not asking them to discuss that.

Jamie said this applicant has made it clear in their Statement of Intent which was applicable to both the application for the Special Exception and the application before this Planning Board. They are applying for a 24-unit multifamily rental apartment building that consists of no less than a minimum number of workforce housing units required by law up to a maximum of 15 unit and for the remainder of the rental units to be offered at market rates. The Board's interpretation of Warner's ordinance is that 100% of the units must below market rate and must be in perpetuity. He submits that there is no way that a developer could proceed based on that interpretation because it is simply economically unviable without some outside funding. The town's ordinance includes a definition for not only affordable and workforce housing but for market rate housing. Why is there a definition of market rate housing if your ordinance doesn't contemplate a mixture of workforce and market rate housing. The

UNAPPROVED MINUTES OF AUGUST 31, 2022

Chair said Attorney Hage you have our position. Attorney Hage affirmed. The Chair said we are not here to be cross-examined.

Attorney Hage said he is asking the Board to reconsider the action they are taking. He believes the statute is quite clear that you must provide, by statute and by law, a developer with a reasonable and realistic opportunity to develop the property and any local board whether it is a Zoning Board or a Planning Board must interpret the ordinance in a way that doesn't discourage that. Jamie said the Board has read into this that primarily the 100% workforce housing unit condition that makes it economically unviable for a developer. The affidavit, that the town unfortunately has not received, outlines and demonstrates how the cost associated with this development when juxtaposed to 100% at 60% of the rental rates there is approximately a \$30,000 a month loss which is certainly not feasible for any developer including his client to be able to develop workforce housing in the face of that interpretation that the Board has just voted on. It is also contrary to the mandate by both the State statute and the town's ordinance.

Adam Quinn said that when they show economic unviability then doesn't that language basically imply that the Board should have the ability to make it realistic and reasonable. We are not trying to make a profit on this, just trying to break even, and not lose money. Isn't the Board given the power to make that a reasonable and realistic opportunity for a developer.

The Chair said, no it doesn't. Because that is not what the statute says. The statute doesn't say that local land use boards shall have the power to interpret their ordinances and regulations so that they come to a conclusion that is reasonable and realistic. The Chair read the law, *"in every municipality that exercises the power to adopt land use ordinances and regulations such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing including rental and multifamily housing."* That base requirement is what the ordinances inherently should say without interpretation. Your argument is that the ordinance as the Board has interpreted it does not give you a reasonable and realistic opportunity to develop workforce housing. The Chair understands that assertion. The applicant's relief is not with this Board it is with either the Zoning Board of Adjustment or with Superior Court or the Housing Appeals Board.

Jamie said in follow up to the Chair's comments. The statute also says accordingly for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers. He asked if he read that correctly. The Chair affirmed. Jamie said so if we could show the Board that this would be economically unviable based on your interpretation, does that suggest that the Board has the power to reconsider a decision that is an unreasonable interpretation of what the statute says. The Chair said they would have to demonstrate to us that our interpretation was itself unreasonable. Jamie said that is a question that would have to be decided by another body or the court. The Chair agreed.

James said to back up to the observation, made by Karen, the other night. The proposed use in the application says 24-units of workforce housing. There is nothing else in the application that points to the proposed use other than 24-units of workforce housing. If they are going to consider some other use does that mean the Board needs a new application. Or can the Planning Board accept an amendment to the existing application. The reason James asks this is it starts the clock over again if they need to consider a new application. The Chair said if this goes to superior court then the court would tell us what to do. James said their other option is to go back to the ZBA.

Jamie said the application as a whole included a Statement of Intent to apply for workforce housing. Which is required under the statute. It was provided by the applicant on August 10. That statement

UNAPPROVED MINUTES OF AUGUST 31, 2022

clearly stated for purposes of both the Special Exception application and the Planning Board approval. Both applications had already been submitted and the Statement of Intent applied to both applications. It was signed by the manager and the applicant. The statement says the goal of the applicant for this 24-unit multifamily rental apartment building to include a combination of workforce housing units as defined above of no less than the minimum number of units required by law to a maximum of 15 and for the remainder of rental units to be offered at market rates. Jamie said the Board needs to look at more than just the cover page of the application but all the documents that were submitted as part of the application. This Statement of Intent clearly was part of that application. Also, the Zoning Board voted to allow the Special Exception in light of this Statement of Intent to apply for workforce housing, which was both mixed market rate and workforce housing. We have gone beyond the Zoning Board and beyond the power of this Board to interpret the zoning ordinance differently and to bar this project. If you don't have a copy of the Statement of Intent, he will forward it.

Janice said there was a Statement of Intent that went to the ZBA along with the application for a Special Exception. The Chair said in the application package to the Planning Board they have a document dated August 8, 2022, a Statement of Intent to apply for workforce housing. Which reads, *"On behalf of Comet, LLC., I, Michael Quinn, intend to qualify for workforce housing in the Town of Warner, NH, with the application also being submitted today sincerely, Michael Quinn, Manager Comet, LLC."* That was the Statement of Intent included in the Planning Board package.

Jamie said the applicant submitted a supplement statement on August 10 for the application for the Special Exception. It was submitted for both boards, which is required by the statute. The Chair said they will look for the supplemental statement of August 10.

Sam said it seems like the ordinance is giving the applicant a reasonable avenue by going through the ZBA process and getting a variance. The lack of time the applicant has is possibly an issue for the applicant, which is beyond the Board's control. If time wasn't such a restriction, then maybe there wouldn't be so much consternation about what the Board's opinion of the zoning is. The Chair agreed.

Andy said they need to read the whole section of RSA 674:58.III., which addresses reasonable and realistic opportunities for the development of workforce housing. It also references the ability of the municipality by virtue of economic conditions beyond the control of the municipality.

The Chair asked the Quinn's how they would like this Board to proceed given the decision they have made? Does the applicant want to continue the hearing to a future date so they can consider their options? Do they want the Board to continue reviewing the application tonight?

Adam asked the Chair that when they get over the disappointment of tonight, they can circle back with their lawyer Jamie and his father, Mike, tomorrow and let the Board know how they want to proceed. The Chair said they need to know tonight whether or not they are going to continue the application, to October 3rd. If they choose, they can withdraw the application at any time.

Jamie said they would be willing to continue the hearing and not to prejudice the ruling the Board has made tonight and our ability to have it reviewed by superior court. The Chair said the Board made this decision by a vote, so the applicant would have a clear interpretation of the zoning ordinance that could be appealed. Jamie appreciated the explanation and would suggest his clients continue the application for review in October. The Chair said the September meeting does not give them enough time to notice regional municipalities, so the next possible meeting date would be October 3. Jamie

UNAPPROVED MINUTES OF AUGUST 31, 2022

asked if the information that was submitted, potentially to the wrong email address, would be part of the application going forward and being considered on September 12th. The Chair said, yes.

Mike Quinn said he would like to speak in private with Jamie as to what their options are. He thought his family was doing something nice for the town by trying to bring some workforce housing that was needed in the Master Plan of the town. He thought they heard that feedback when they were doing the previous development in the adjacent lot. He thought they were coming back with something reasonable, and they didn't hide the fact that they couldn't do this unless it was the way they had presented it. He feels very discouraged, he doesn't think the town of Warner wants any workforce housing, maybe they want commercial development there.

Jamie said he thinks they can continue the hearing and still consider their options. They certainly are not going to withdraw the application, at this point. The Chair said that is an important message to the Board.

The Chair said to the Quinn's he understands their disappointment and understands what they were trying to do. This is the Board's interpretation of the zoning ordinance regardless of how they as individuals might feel about the application.

Sam said this is how the process works in all of our applications, to be fair. Sam said there was a comment that it appears the Town of Warner does not want workforce housing. That is not what we are saying, we will follow the process correctly so if the town ends up with workforce housing it is the most appropriate workforce housing for the Town of Warner.

Don said they have an obligation to the Town of Warner to speak, which have spoken to some extent but, it is pretty obvious that the scales are tipping in a different direction and that is part of our process.

The Chair said he hopes that anyone that has spoken before the Board feels they were treated respectfully. This is not a popularity contest and not subject to popular vote, if a project meets the standards that are adopted the Board is obliged to approve it. It is not up to the Board to insert public judgment or their independent judgment in the face of facts and objective standards. The Chair said there has been a lot of objections to this project, but, in the letters that were received today there has been a lot of support for the project, as well. For a clear lesson on how Planning Boards should not conduct their business. I encourage you to read the Supreme Court's decision on the 2018 Trustees of Dartmouth College vs. the Town of Hanover. The Town of Hanover had a site plan review by the college for a use that was permitted in a district and that met all of the objective standards of the zoning ordinance and site plan regulations. Nonetheless denied it because the neighborhood around where the project was proposed didn't like the project. To be blunt the Supreme Court handed them their heads. We have to be thoughtful about the standards that we have been given to apply to the applications before the Board. The Chair believes they are doing that with this interpretation of the ordinance. The Board may be wrong but, it is up to someone else to demonstrate that.

Jamie and Adam both said they would continue the application to the September 12, 2022 Planning Board meeting. The Chair said the Comet, LLC., application will be continued to the September 12th meeting at 7:00 PM in the Town Hall Lower Meeting Room. Jamie confirmed that he just emailed the Statement of Intent to Janice. The Chair they will add it to the file, as well.

The Chair reopened the public hearing continued from Monday, August 29, 2022.

Barb Marty said the Board said they had three options, one being the Housing Appeals Board. Could they explain what they are and what they do. The Chair said it is a body of three members that has

UNAPPROVED MINUTES OF AUGUST 31, 2022

concurrent public jurisdiction of the Superior Court to hear appeals of local land use board decisions on housing matters. So, a Planning Boards' review of a subdivision, a site plan for multifamily housing or the ZBA's hearing of an appeal and administrative appeal on housing matters or a variance on a housing matter or a special exception on a housing matter those are amendable to an appeal to a Housing Appeal Board. They have the same review powers as the Superior Court. Three members appointed by the Supreme Court who are able to review these local decisions generally faster by applying the same standard law. James asked if one of the justifications for that is to lower cost for whoever is appealing a decision? The Chair said one of the justifications for the legislature to create the Housing Appel board was increasing the speed of appeals and reducing the cost of appeals, for both the appellants and the municipalities.

Pam Smith asked about the applicant's ability to return on September 12th does that mean the public can forward their comments for, or against, to the Board. The Chair said the hearing is continued to September 12th so the record will remain open.

Henry Garcia said as he understands the procedure, whether everybody is against it that is not the way the game goes. It is the Board's responsibility to decide one way or the other. The Chair said, yes. Mr. Garcia is concerned about the economic impact on the area where they propose to build and mainly the river and will that be part of the Board's consideration. Also, the safety of people in that area in terms of traffic. He has had two instances of his vehicle almost being hit in the Intervale area. What are we going to do in that area when we have 24 units, he is in favor of it, but, not in having it mixed.

The Chair said the impact on the environment of any development is a valid and important concern. They do have the benefit of having advice from the Warner River Local Advisory Committee and the Chair, Ken Milender who is here tonight. The Board has a letter from them with a series of recommendations. The Board has also hired an independent engineering company to review the application. They have given substantial comments which deal with stormwater runoff and the impact on the area surrounding the river. The other concern is safety and recognizing this is a state highway. The Department of Transportation will be involved they decide the form and function and access to the state highway. It is also a legitimate concern for this Board. The DOT has the ultimate say as to what the driveway looks like although, the Board will have a substantial opportunity for input. If there are issues the Board believes reduce public safety than it is our obligation to raise them and bring them to DOT's attention and recommend the applicant make changes. If in the Board's judgment it is an unsafe application, then the Board could decide to deny the application. That judgment should be based on a traffic analysis by a competitive transportation engineer, either the applicant's engineer or the Board can submit that to our own engineer.

Mr. Garcia said an additional concern would be people walking safely, in that area. In the comments of the Planning Board's engineer and the Central NH Regional Planning pedestrian access was raised. That is something else the Board will consider.

Andy said they have a long list of drainage, lighting, signage, endangered species, water supply, fire and other safety concerns, all part of the site plan review regulations.

Nancy Martin referenced a comment made to her by Barb Marty, on the zoning decision. Under our current zoning ordinance, the Zoning Board cannot make a decision about fair market housing in the commercial district. So, those extra additional units are out of their purview. That's why they are at 100% because the ZBA cannot make a decision on the market rate units without a variance. The Chair said far be it for him to question the judgement of the ZBA. Nancy said if you look at it from that

UNAPPROVED MINUTES OF AUGUST 31, 2022

perspective the ZBA can't make a decision. James said the use is subject to a variance. There is a use table that says certain things are permitted or permitted by special exception. Any use could be considered based on the State laws.

The Chair stated that 35 letters have been received by email. He isn't going to read them into the record. There are comments pro and con which raise legitimate issues. Board member will read all the comments.

James asked for the additional document from Attorney Hage to be forwarded to the Board. Janice said she does have the Statement of Intent she had asked for it, specifically, for the ZBA application for a Special Exception. It was received for that purpose.

Romeo Dubreuil confirmed there is a 30-day appeal process for the ZBA decision. There seems to be so many inconclusive and undocumented pieces of the applications at the beginning of process. It seems like there is an incomplete application before the Board. The Chair said they have already accepted the application as complete. Romeo said he understood that and a review of that should be done to confirm that. The Chair said they are not going to reconsider whether the application is complete that has already been done. They also are not going to consider the 30-day appeal process for the ZBA, it is not relevant to the Board's process.

III. ADJOURN

The Chair adjourned the meeting for continuing the application to Monday, September 12, 2022 at 7:00 PM in Lower Town Meeting Room.