



TOWN OF WARNER

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**Zoning Board of Adjustment
Minutes of August 10, 2022**

Town Hall in the Lower Meeting Room

1. The Chair opened the ZBA meeting on at 7:07 PM.

A. ROLL CALL

Board Member	Present	Absent
Karen Coyne (Alternate)	✓	
Jan Gugliotti (Alternate)	✓	
Beverley Howe	✓ (via Zoom)	
Elizabeth Labbe	✓	
Barbara Marty (Chair)	✓	
Lucinda McQueen	✓	
Harry Seidel (Vice Chair)	✓	

Also present: Janice Loz, Land Use Administrator, Mike Quinn and Adam Quinn of Comet LLC, Jamie Hage of Rath, Young and Pignatelli – agent for Comet, LLC., Ben Osgood – Ranger Engineering

2. NEW BUSINESS

A. Application for a Special Exception. Case: 2022-03

Applicant: Comet, LLC., Adam Quinn

Agent: Jamie Hage of Rath, Young and Pignatelli

Address: 9 Route 103 West

Map/Lot: Map 35, Lot 4-3

District: INT and C1

Description: 24-Unit Apartment Building for workforce housing

The Chair explained the process for the hearing for the applicant and the public.

The board considered whether the Comet application was complete. Harry said he found the application to be complete. The Chair noted the Planning Board meeting minutes from the August 1 consultation with Comet, were received by the board prior to this hearing. Harry referenced the receipt of the Statement of Intent from the applicant, which was received by the board, prior to this meeting.

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The Chair noted in the application the Special Exception to the terms of the Zoning Ordinance referencing XIV-A.C.1. The Chair read the terms referenced for clarification to the board. Elizabeth thought the application looked complete. Janice said the abutters were noticed and fees were collected. The Chair asked the board if there were concerns for regional impact for this application. Beverley had questions about the process for determining whether an application was complete. The Chair said we are looking at the application checklist and verifying if the application is complete.

Harry made a motion to accept the application as complete. Elizabeth seconded the motion. Discussion: None. **Roll Call vote:** Beverley Howe – Yes, Elizabeth Labbe – Yes, Lucinda McQueen – Yes, Harry Seidel – Yes, Barbara Marty – Yes.

The Chair asked the representative of the applicant to present the application to the board. Jaime Hage, Attorney of Rath, Young and Pignatelli representing Comet, LLC., Introduced himself to the board. He said this was a very worthwhile project and application, and expected the board would also hear from the owners Adam Quinn and Mike Quinn, and the engineer Ben Osgood. Attorney Hage said in 2008 the supreme court had a case that tried to address workforce housing. That case determined legislature would be needed to address this need. The legislature passed RSA 674:58-61. The definition of affordable housing and workforce housing are set forth in that section. The purpose for this was to give every municipality an opportunity to provide workforce housing which is affordable housing based on certain definitions. He said Warner adopted **Article XIV-A** the Workforce Housing statute. He read the introduction to that ordinance.

“The Town of Warner recognizes the importance and benefit to the community and its citizens in the establishment of suitable opportunities for Workforce Housing. The Town recognizes that there are some situations in which normal Zoning, Site Plan Review and/or Subdivision requirements may be waived without sacrificing public health, safety and welfare so long as proper safeguards are maintained. Town of Warner Zoning Ordinance 27 Amended March 9, 2021 maintained. Accordingly, it has been deemed advisable to adopt Workforce Housing in accordance with 674:58-61.”

Jaime Hage said the town can waive any requirements by special exception or by the Planning Board for workforce housing as long as it satisfies health, safety and welfare considerations, which we think this project does. Having said that we have applied for a special exception. He said as this town knows it is very different to apply for a special exception than for a variance. These are uses, in this case workforce housing is a use that is allowed in this district, C1 and Intervale by special exception, which can be waived. This project is for a multifamily workforce housing development in District C-1 and the Intervale.

It is his understanding there hasn't been a workforce housing project in Warner that has come before this board. Workforce housing is desperately needed not only in Warner but throughout the state of New Hampshire. Attorney Hage said he represents the largest employer in Warner, MadgeTech. They always need good workers and good places for them to live. The owner of MadgeTech is in favor of workforce housing and has authorized Attorney Hage to make that statement. There used to be a company in town called Warner Power, their building was acquired by another company. They are going need workers and housing. Warner is a wonderful place to live. He personally lives in Concord but, has

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always came to the Warner Fall Festival, every year. Warner is a good place for affordable housing in order to attract workers and is better for the tax base.

This is a use that is allowed by a special exception. This project fulfills the very purpose the town of Warner articulated in the zoning ordinance if it meets the requirements of being affordable, is workforce housing and that it meets certain other requirements. Height and density usually do not apply to multifamily workforce housing in the C1 and Intervale. Although, this project is cognizant of the character of the Warner and wants to present a project that is consistent with the character. Being located at Exit 9 is an appropriate place for this project.

Attorney Hage read the applicants responses to the four conditions that must be met for a Special Exception.

A. The use requested is identified in the Use Table of the Zoning Ordinance as a Special Exception in that respective zoning district, or as otherwise stated in the Zoning Ordinance.

This use is allowed by Special Exception for multifamily Workforce Housing. The Use Table, item 6 specifies it is allowed in C1 and Intervale by Special Exception. Attorney Hage felt the project meets that requirement completely.

B. The requested use is essential or desirable to the public convenience or welfare.

Attorney Hage said they need to look no further than the purpose set forth in the Workforce Housing Ordinance. This fulfills the importance and the benefit to the community and its citizens, to establish suitable opportunities for workforce housing. He wondered aloud what does suitable workforce housing mean. To be suitable the Town has an obligation not only to provide the opportunity for it, but to provide reasonable and realistic opportunities for the development of this workforce housing, including rental workforce housing. So, it must adopt rules and carry itself out in such a way that it does not prohibit the development of workforce housing in a suitable district such as this.

The town of Warner recognizes this importance and benefit to the community and its citizens. As the application sets forth, Warner has a need for affordable housing. This project is located close to amenities, shopping, police and fire station and is serviced by municipal sewer and water. Attorney Hage said he spoke with Ray Martin of the Water Precinct. Ray indicated to him that there is a surplus of water and sewer capacity to handle this project. Ray indicated the town has the capacity to handle 230,000 gallons per day of water and sewer combination. At present the whole town of Warner consumes 50,000-to-60,000 gallons per day. So, there is a surplus available. Attorney Hage asked Ray whether a project of 24-unit housing is going to use up the surplus, and he said absolutely not. He estimated each unit may use 24,000 gallons per year.

Attorney Hage said this project would be serviced by municipal sewer and water and there is more than ample capacity to handle the needs of the project. The proposed location will not be detrimental to the public convenience or welfare and the use will be beneficial to allowing lower income residents to remain in Warner. This project is both realistic and reasonable.

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C. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals or welfare.

This project is located within the primary workforce use area but it borders on a residential use area. It is a wooded lot and is going to be pleasant esthetically and will fit in with the general character of the area. Wouldn't it be wonderful to have an apartment complex at Exit 9 that is well groomed and landscaped. The alternative is to have a huge commercial box store which wouldn't need a special exception. Why not have a project like this that is going to enhance the beauty and character and provide a valuable service to the community workers.

D. In OC-1 and OR-1 zoning districts only: Use of structures must conform to road access and availability of all services to that parcel at the time the Special exception is requested.

Attorney Hage said this is not applicable. This project is in a Intervale / C1 district.

Beverley asked if this building will have children residing in it. Attorney Hage said, yes. Beverley asked if there would be a playground available for them, considering there is a river directly behind the property. Also, there will be cars coming into Dunkin' Donuts. The traffic coming off the highway to town, are sometime just passing through. That could endanger the children. Also, are there going to be washers and dryers in the units? Will there be a janitor? Is it a gated community? Is it lit at night?

Adam Quinn responded to Beverley. He said after the Planning Board meeting they stepped outside and listened to members of the town and their feedback. It was helpful to them to understand the concerns. The number one concern we heard is to make the area a better area for people to want to live in and socialize in and not just a place to rest your head. We have not had a chance to present some of the changes we would like to see. Our plan is to put a common area in the back of the building with a playground or some version of it.

Mike Quinn said there will be outside lighting, which will shine down and not interfere with any adjacent properties. It will not be a gated community. There will be a substantial driveway, from Dunkin' Donuts to the parking lot of this complex. The distance would be shorter directly to Route 103, than to go through the Dunkin' parking lot. The lot is a 13-acre lot and they are developing about 2.5 acres of it. Most of it is preserved for conservation. Beverley also stated there is a river behind it.

Beverley asked who selects the tenants? Adam Quinn said they pick the tenants. The workforce housing regulations requires certain pre-screened questions to be answered by potential residents. He and his father, Mike Quinn will pick the tenants.

Jan G. said it sounds like a great enterprise with a thousand details. She has read a little bit about the workforce legislation and that they have to keep it literally at affordable however that is calculated for five years. Apparently, the deed restriction is over in 5 years. Adam said the grant requires a five-year restriction. The town of Warner requires a different restriction of perpetuity. Adam said they are bound to what the town requires. The grant requirement is different.

Jan G. said 2.5 acres is to be developed and covered with concrete and will be nonabsorbent. Have you given any thought to surfaces that are water permeable. Ben

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Osgood from Ranger Engineering Group, responded that the property is actually 13-plus acres. There is a 10-acre conservation restriction which runs along the Warner River. That land will stay restricted and never developed, it contains wetlands that are associated with the river. The developable site is 2.6 acres of that is approximately 1 acre of impervious surface. This includes driveways, parking areas and the roof areas of the building. He said, pervious pavements are difficult to maintain, they require continual sweeping, you cannot spread salt and sand or they clog up the pervious pavements. So, they have designed a subsurface structure that collects and infiltrates the majority of the water from the impervious surfaces into the ground. The problem from a drainage perspective is they have very well drained soils so in the one-and-two year storms in the present conditions there is no run-off. We collect all the run-off from a 2.5-inch storm and it all goes into the ground and is infiltrated into the groundwater. Which is going to keep the Warner River flowing with groundwater instead of running off and riding down the river unimpeded. That is how we have approached the drainage calculations. There are a lot of underground infiltration chambers that collect water from the pavement.

Attorney Jamie Hage said in terms of Jan G.'s question about maintaining affordability. According to the Warner Zoning Ordinances, workforce housing to be rented the income qualification shall be reported to the Board of Selectmen or its designee. The manner of the reporting shall be a condition of the approval of the development. Furthermore, the assurance of continued affordability requires the developer to make a binding commitment. In a situation where you are selling units there has to be a deed restriction for 30 years. In our situation it could be through a continued affordability commitment that is laid out by the municipality. It might be through a written lease for each tenant, the tenant can't sublet. There are a whole lot of restrictions in terms of workforce housing units that are part of that development.

Karen said she thinks the income is reportable to the Select Board and that you will be picking the tenants. Is there oversight of the tenants more than just their income level. Are there requirements that they have to work for a Warner business in order to maintain residency or could this fill up with people working in Concord. Does the Select Board have oversight to ensure that our workforce housing is working for us. Adam Quinn said it was good question, but, didn't think there was any requirement that tenants are working for Warner. Their intention was not to provide housing for Concord, but, to build in Warner. Karen said if it is not providing workforce housing for Warner businesses, then it is not providing for Warner. The Chair said the lawyer, Jaime, did touch on this, there is a provision that says the housing units to be rented, the income qualifications for potential tenants shall be reported to the Select Board or its designees and the manner or format of such reporting shall be subject to Planning Board approval as a condition of approval of the development. So, she thinks there will be some oversight by the Select Board as far as the reporting and possibly by the Planning Board as to setting some conditions or preferred conditions for the renters.

Karen said from what she read the income has to be approved, but, she wants to make sure the logistics are included. The Chair said it may get into a discrimination issue. Attorney Hage, said he did not know if it can restricted to that extent. He went on to say if someone lives in Warner and works in Concord or works in Vermont and comes home every night, they still live in Warner, they still benefit from the town. If you have a project like this, you are maximizing the possibility that you are going to attract workers to Warner who want to live here. Mike Quinn said as the owner of Dunkin's they have had difficulties

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getting people to work in Warner. The complaint is there is no place to live that they can afford. Apartments are expensive everywhere, Warner is not an exception.

Karen asked if the fire truck access to the back of the building and has that been addressed. Ben Osgood said that has been addressed, they have a plan that shows how the fire trucks can enter and drive around the building and exit without conflict. The fire truck wouldn't pass over into parking areas, they would use the drive lanes around the building.

The Chair asked Ben Osgood if the total land for this lot 13.8 acres and the conservation easement is for 11.2 acres. Ben Osgood said that is correct, leaving 2.6 acres of buildable area. The Chair asked if this is the only project to be placed on the remaining 2.6 acres. Ben Osgood confirmed that was correct. The Chair clarified there would be no room for any other development of the property. Ben Osgood agreed, based on the topography of the site, this is all that can fit on the site.

The Chair made a reference to the original drawing showing the roadway from the Dunkin' property crossing over to the apartments. She asked if included a walkway and a bike path, or anything for pedestrians. Ben Osgood said it did show a five-foot sidewalk along the roadway which would connect to the Dunkin' sidewalks. The Chair said in the Planning Board meeting they had said some Dunkin' parking spots might be removed to create this roadway. Ben Osgood affirmed that statement. The Chair asked if that would include all of the spots in the front of the building. Ben said, no, he believes they would take out three spots at the Dunkin' site. The spots in front of the building would remain and the driveway would continue from there. They would lose three spots. The Chair asked if the drive-thru customers also use that same pathway, as they exit. Ben Osgood stated the drive-thru exit would use the same exit lane as the apartment building residents.

Harry asked would there be accommodation within the 24-unit for ADA living. Addressing wheelchair accessibility would be a good to accommodate. Adam Quinn agreed. Ben Osgood said the first floor is totally accessible. The front and back entrances are ADA accessible. There will be handicap parking spaces. There certainly could be an opportunity to do that. There could be two units, a one-bedroom and a two-bedroom unit.

Harry commented that he used to be on the Energy Committee, Warner has solar collectors that provide energy for municipal buildings in town. Energy is mentioned in the Master Plan. It would be great if this building could be a model for energy efficiency. It's easy to do energy efficiency in little houses but, the real opportunity is in a big 24-unit building where you are sharing the benefits.

Harry also commented on the pedestrian infrastructure which is also mentioned in the Master Plan. Warner residents are strong proponents of bicycle and pedestrian travel. They have been trying to get a sidewalk through town for a long time. He did not see on the plan a bicycle or pedestrian walkway. The Chair said that Ben Osgood had just said there was going to be sidewalks, within the community. Adam Quinn said he would be interested in talking further about pedestrian infrastructure, in the future.

The Chair asked about the conservation easement on the back section of that parcel. In order to protect water quality of the river with natural vegetation and a buffer have they thought about how they are going to protect that area. With the potential of people using that area or kids playing there, how you are going to protect that area. Ben Osgood said

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that area is not conducive to recreation. It is a place where you need hip-waders. It contains pools of water, reed grass that is six-feet tall, it creates its own natural buffer. Although they have on the latest plans fencing so there is no intrusion into those areas.

Beverley asked again if a janitor would be in the building? How long will Warner be involved in the people who live there and their rents? She said there was a comment that involvement would go to the town after five years. The Chair said, no, the town of Warner maintains it has a component of affordable housing in perpetuity. She continued to say the Warner's regulations states that the Select Board are involved in screening the applicants to make sure they qualify for affordable housing. Adam Quinn said there would be a janitor.

Elizabeth addressed the income levels for this project. Her understanding is, this is not going to be completely workforce/affordable housing. She confirmed that those two terms workforce housing and affordable housing are interchangeable. Jamie Hage said, yes, that is the way it is defined in the statute. So, the income limit for a family of three it is \$50,580 a year, which is considered to be 60% of the median income. She said is that the lowest income you would accept. Mike Quinn said, yes, it isn't even possible to do all 60% AMI and pay for the building. In fact this project is not possible unless there is help from Governor Sununu's Capital Improvement program which is very generous. This project wasn't possible when we considered it a few years ago, when the town said they needed affordable housing. To have all units be 60% or 80% they would be losing money.

Although, if they got the Capital Grant they could break even, maybe with the 60% or whatever the town requires, or 80% with the grant. Market rate housing is going to be there to help pay the mortgage. The bank will want to see the money borrowed is going to be paid back. Their family's (the Quinn's) goal is to make it all affordable housing, which is not a profitable goal for us, they don't want to lose money.

Elizabeth said in that case it would be a tax-exempt property. Mike Quinn said they have not looked into that possibility. He is not well versed or educated on that issue. Elizabeth clarified that their goal was not to have 100% affordable housing, at the 60% of median income, but, it is not likely. Mike said he understands the town says 60% affordable housing and the state says 80% affordable housing, he is confused by that. He said they will be in conformance with what the town says is appropriate and then they will deal with the state grant. They may have to put in market-rate housing to make the bank note, there goal is to put in as much affordable housing as possible. Jamie Hage, the attorney, said it would only be tax exempt if the entity was non-profit or considered a charitable organization. Jamie said the grant program would require 15-units that must be workforce housing, up to 80%. Elizabeth commented that is \$25 to \$30 dollars an hour income for the workforce housing, she said that is expensive. Mike agreed and said for market rate housing you have to make \$90,000 of family income.

Karen said in the initial Planning Board meeting, Ben Frost, had commented that Warner's requirement was that it was 100% workforce housing, there couldn't be any market-rate units. Adam Quinn said he heard that too. Janice said she confirmed with Ben that was his comment, and it was. Janice said she couldn't find a reference to that percentage in the workforce ordinance. Karen said this will matter to the town when this comes to a vote, whether it is 100% workforce housing units in the building.

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Jamie Hage referenced the Warner Zoning Ordinances XIV-A Workforce Housing subparagraph C.3. which reads in part, *“the combined total of all workforce housing types must equal a 15% designation of workforce dwelling units at a minimum.”* If they were to take that literally and we are doing a 24-unit building then only 15% has to meet the workforce dwelling unit requirement, which would only be four units.

Karen said there is a special exception situation versus a variance. So, if it is all workforce housing then it qualifies for a special exception in the Intervale/C1. But, if it has regular rate units then it no longer qualifies for that requirement and it needs a variance. The Chair said that is correct. Janice and Barb said as they understood it as long as it has some workforce housing in the building it may qualify as workforce housing. The Chair said those numbers will be worked out further by the Planning Board. Jamie Hage said they plan on having 15-units out of 24-units reserved for workforce housing. Mike Quinn said that would meet the 80% required by the state. Elizabeth said that lasts five years, then they can reevaluate. Karen wondered if after five years they could reduce the number. Elizabeth said as she understands it as long as it is not under the 15%. Mike Quinn said that is his understanding as well. His family doesn't intend to change everything in five years. Jamie Hage said hopefully the Planning Board can work that kind of thing out.

Jan G. asked if a couple moves in and is making \$50,000 and someone gets a raise, do they get kicked out. Jamie Hage said the income has to be verified annually.

Karen asked about the comments passed on from Ray Martin about the water. Is there anything in writing that substantiates the fact that he commented on the water availability. She had read the town was at a shortage of water, she just wanted to confirm. Jamie Hage said when he spoke with Ray he was about to travel out of town, and couldn't make the meeting. Ben Osgood said he spoke with the Water District and they are eager to have more people tie into the water and sewer which would help their budget. They have a capacity of 230,000 gallons a day but they are only selling 56,000 gallons a day. 230,000 gallons a day would help pay for their infrastructure. All the utilities were extended to the property line, when Dunkin's was built.

Ben Osgood said they are in the process of doing a lighting plan. They send the lighting to the manufacturer, and they come up with a plan that meets all the regulations for the lighting. There are certain minimum requirements for safety. It shouldn't be too bright and washing off the property. He hasn't been to the Dunkin's at night but, he doubts there is a huge glare because the lighting was done well.

Ben Osgood said the state requirement says the housing needs to be affordable for a minimum of five years. They can purpose what they want, which will help them get more money. If the Quinn's say they want to keep this in perpetuity and they have a 20-year note they have to pay and they need assistance to help bring that note down so its affordable and they can pay off the property. Then the bank would consider giving that money.

The Chair said Beverley asked if there was going to have washer dryer hook-up in each unit. Ben Osgood said, yes.

Karen asked about the driveway and peak traffic times for a shared driveway with Dunkin's'. Have they done an impact report for that traffic area. Ben Osgood said that is in the works. The traffic engineer has been on vacation. Although, apartment units do not

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produce as much traffic as residential units. With 24-units the traffic engineer said it will be negligible. Maybe there will be another 10 trips in the peak hours, which is within the variability of Dunkins'. Although, they will have to confer with NHDOT to make sure the shared driveway is still going to be functional. Worse case scenario some dedicated turn lanes may have to be added.

The Chair asked for public comment.

Christopher Ross, said he is curious about the water situation. He hasn't been able to water his lawn or wash his car in five years, because he was told he was going to be fined if he used outside water. He learned about this project on Facebook. This project is being fast-tracked because of the deadline for funding, it seems that something of this magnitude is being rushed through. It just is too fast and should be thought through and done properly. He asked if this is going between the Citgo and the Dunkins'? The Chair said, no, it is going on the other side of Dunkins'. The Chair asked about the location of his lot. It was on the other side of the White Clover, LLC., lot which is commercial. He said he is an abutter, and he is concerned there is going to be a three story building in his backyard.

The Chair said he is correct it is a very compressed timeline because September 2 is the deadline for the grant application. The applicant will need a Special Exception from this board then if this hurdle is jumped, they will return to the Planning Board for a Site Plan. The Planning Board will then have a very busy night looking at the modified plans and deciding whether or not to issue a building permit which they will need to take to the state in order to get the funding. Mr. Ross asked when does this go to the town for the people to vote on. The Chair said there isn't a vote. This hearing is for a special exception application where you get to voice your concerns and ask questions of the applicant. Then the Planning Board will get to make decisions as to the final design that is accepted. Every year any change to the zoning regulations is when the town votes on what is acceptable in the town in certain zones. Mr. Ross said so an exception has to be made for this project to happen. The Chair said, yes, and that is the responsibility of this board. The Chair said they are only voting on the use, they are not voting on the actual make up of the building or how many units are affordable. They are voting on whether having an affordable housing development is appropriate for this lot based on the three questions they answered in the application. Mr. Ross said basically my home is put in your hands whether I am going to have a three-story building in my backyard. The Chair said our hands and the zoning ordinances which were voted on by the residents of Warner.

Woman (name?) resides at 157 West Main Street. She had concerns about the impact on traffic. Exit 9 now is extremely busy especially on weekends. Sometimes when you do want to go Dunkins' they can't even get down the entrance because of the traffic. She can not believe that a 24-unit apartment isn't going to have an impact on traffic in that small intersection area. (inaudible?). The Chair said they do have a limit on the height of buildings of 45-feet and this building comes in at 44-feet. Ben Osgood confirmed.

Mike Quinn said he thinks it is a fair statement that this project is being rushed. They are not trying to sneak something by people, it is the stipulation of the grants that set the timeline. They appreciate the town accommodating them, regardless of the decision that is made. This is the smallest building they could build and the reason they are doing it is because it is in the town's Master Plan, that the town wanted workforce housing.

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Kathi Schoonmaker, said she is a retired nurse and on veteran's disability. She keeps hearing the term workforce housing and she knows they are going to verify the income. She questioned whether they are verifying employment. If they become unemployed while living in workforce housing do they leave so someone who is employed and needs workforce housing and can continue their employment here and live in Warner. Will they be required to leave if they become unemployed? The Chair said as long as they are able to pay their rent, they will be able to stay. Although, they will be below the income levels to qualify for workforce housing. Ms. Schoonmaker said so they don't actually have to be working anywhere. She is on social security and disability; she can afford her apartment in Warner and she is not working at all. This is housing that will accommodate people that are employed. You are trying to find new employees for the service area that do not have adequate employees. The Kitchen can't stay open, Reed's can't stay open, Subway can't stay open because they can't find employees and employees can't find housing. Yet, as she understands it people who are going into this housing don't have to be employed, they don't have any income. She has income and yet she isn't going to be an employee again.

Jamie Hage said the income has to be what is reported on the 10-40 tax return, in order to qualify for housing. Ms. Schoonmaker said if they become unemployed will they lose their housing. If they become unemployed and can pay their rent then they will be allowed to stay in the unit. The Chair interjected and said at least until the annual verification review. The Chair said that kind of detail doesn't really apply to what we are hearing tonight. We are verifying if it is a qualified use. Ms. Schoonmaker apologized for taking up their time. The Chair said they appreciate the input.

Joanne Hinnendael said thanks for having this meeting on Zoom. If there was a hotel going in at this location they would be paying commercial taxes. What does an apartment building do to the commercial rate vs. the residential rate. She believes the commercial rate is probably higher. She sat on the Zoning Board and the town was sued by Market Basket when they got their assessment, and they didn't like it. Then we all had to absorb \$200,000 dollars. She is curious if anyone knows that answer. Jamie Hage didn't think there was a commercial rate and a residential rate. The tax rate is set by the town based on their budget and the rate is x-amount of dollars per thousand and it is the value of the property that drives the taxes. Jamie Hage said this building and property will add more to the tax base as opposed to a dollar store on the same site. Elizabeth said the water and sewer is an additional tax.

Bobbi Harrington is a nurse who works in Manchester and in New London and they own their home. She thinks this project is about as esthetically pleasing as a super Walmart. She does not think it suits the charm of Warner at all. She thinks it is disingenuous to say the traffic is only increase by maybe 10 people at peak. People don't live under rocks they don't live in bubbles, they have guests and family stay-overs and get togethers which adds extra traffic. Another concern she has is her daughter takes the bus to go to Kearsarge High School. There has been multiple times when her bus couldn't come get her because there weren't enough bus drivers. So, we are going to add more children and stops. She already has to get on the bus this coming year at 6:30 AM, so would this mean she would have to get up at 5:30 AM, that is a concern. In addition, there is the added traffic slowing buses through town. Lastly, the upkeep of this building. Having lived beside many workforce housing or low income housing they do get rundown over time. What is the commitment to maintain this property, so it doesn't look shotty or rundown.

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The Chair said the applicant has spoken to the traffic issue and they will have a maintenance person and there will be market rate housing in here as well. So, you will want to be able to attract people who are willing to pay market rate for these apartments. So, she would think maintaining them would be to the owners benefit as well as the town. She asked if they wanted to add to her statement. Mike Quinn said they would probably be the best people to take pride in ownership of the building which is incentivized by how their family run their Dunkin' Donut shops, clean and sanitary. We want them to be places we are proud of.

Bobbi Harrington said she understands what they are saying she did live in a workforce apartment when she lived in Manchester and it wasn't cared for. She said the comment that this building is for people who work in Warner. But the service industry people don't make that income requirement, in terms of the jobs that are available here. The apartments are owned by people who work elsewhere. What come next do we build one at Exit 7 and then at Exit 8.

Janice said someone is asking if the letters are going to be read into the record. The Chair asked if they were available online. Janice said they aren't yet. Karen had access to the letters from the public.

Reference Attachment 1 – public letters

The Chair said the Warner traffic study is going to be done. She asked the applicant if they wanted to address either of the issues brought up in the letters. Jamie said he thought they covered most of the issues tonight.

Reference Attachment 2 – email between Planning Board Chair and Land Use Office

Ben Frost thanked the board for conducting this hearing tonight. Since his email was read by Janice he would like to clarify what he meant when he wrote it. This email was in response to Janice's question as whether there was a governing law on the number of workforce housing units that must be included in a development. Ben said there is not at the state level, this is governed by how zoning ordinances are drafted and how they impact upon workforce housing proposals. Many communities offer density bonus' in exchange for a proportion of a development deemed workforce housing. That is how the town's incentive bonus system works in Article XIV-A. This is his opinion speaking as a Planning Board member and someone who has worked on the zoning ordinance. The language that was adopted two years ago allowing for multifamily workforce housing which is seen in the use table, residential uses, by special exception in specified districts refers only to workforce housing. It does not in his view refer to mixed income developments that include a portion of market-rate and a portion of workforce housing. In his view, it allows only by Special Exception Multi-family Workforce Housing. Not a mix of units. That is his clarification of his email, he would be happy to answer any questions.

The other point Ben wanted to make was in terms of long-term affordability. There is no governing standard in state law on what the requirements are for long-term affordability. But, if you look at Article XIV-A.E. and the assurance of continued affordability. Most of what is written there addresses workforce housing developments for sale and this is a rental project. Specifically, paragraph three addresses rental units of workforce housing and it does not state a duration of affordability. He said the number of five years has come

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up in conversation and that relates to the financing source. The way he would read this is where a developer is purposing workforce housing rental units those must be affordable in perpetuity.

Jan G. asked Ben about the discrimination between workforce and mixed-use housing...Ben interjected mixed-income housing...but, this seems to fit the state statute and the warner ordinances in XIV-A that even though it is mixed it is workforce housing. She asked Ben if she was wrong about that. Ben said he is only giving his opinion, his reading of the zoning ordinance. The way he reads it is that the use table allows for multifamily workforce housing, not multifamily mix of workforce housing and market-rate housing, rental. It simply says multifamily workforce housing. That is why he said in his email to Janice that multifamily workforce housing development purposed for a Special Exception, they all must be workforce housing units.

The Chair clarified that in Ben's opinion this application does not qualify under number 6 of the TABLE 1 Use Regulations as multifamily workforce housing. Ben said he has not seen the application to the ZBA, he has not read through it. If what is purposed is a 24-unit of workforce housing, then it is workforce housing.

Harry asked Ben about the workforce housing article it says that the town recognizes that some situations in which normal zoning, site plan review and subdivision requirements may be waived without sacrificing public health safety and welfare as long as proper safeguards are maintained. Would that statement address where there is a mix instead of all workforce housing. Ben said he didn't think that makes a difference, in his opinion.

Jamie Hage said he disagrees with Ben's comments. He does think the waiver language in Article XIV-A would relieve the requirements. Also, when the workforce housing ordinance is read as a whole, it contemplates mixed use, not just 100% workforce units. Section three which talks about the combined total of all workforce housing types must equal the 15% designated workforce dwelling units at a minimum. So, the ordinance contemplates you can have different types of dwelling units. The Table of Uses in a C1 of which the Intervale is a part of, a one-family detached dwelling is allowed with a Special Exception, two-family dwellings are allowed with a Special Exception and multi-family dwellings are allowed with a Special Exception. So, if you have a combined project that has workforce housing and otherwise, multifamily dwellings that too qualifies for a Special Exception. Under that regime based on the use regulations, the workforce and zoning statute as a whole, he thinks this project fits within it, as long as it meets the three requirements.

Beverley asked who will enforce the rents that are paid, in the future, and what proportion that is workforce and those that are not. The Chair said they would have to reconfirm their incomes annually in order to qualify for the workforce housing unit. Beverley said she understood that, but, if they are also allowing people who are not workforce housing qualified, or market-rate. The applicant has said they are going to do this. Who checks this the Zoning Board or the Select Board?

Harry said in the workforce housing article section "f.2." it says the responsibility of monitoring compliance with resale and rental restrictions on workforce housing units shall be the responsibility of the Select Board or their designee.

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Janice Loz commented as a member of the public. She lives on Split Rock Road and the back of her property abuts North Road behind the police station. She is in very close proximity to this proposed project. She does not have a problem with the project. She feels the time for herself or anyone else to speak about this project was when the town voted to allow the workforce housing ordinance in in 2010. Also, in 2021 when the change to the use table was adopted by the voters to be allowed by special exception workforce housing in the Intervale and C1. That was the time for everyone to say what they felt about this and to vote against it, if they did not want an apartment building in that area. This speaks to whether the public finds this desirable or essential it was voted on and was passed, recently. In terms of the integrity or the character of the district, she thinks the traffic flow is concerning she comes out on North Road and also on Route 103 by the fire station which is also not easy. But, she believes the Planning Board will take that seriously and address that the traffic flow. The Zoning Board could add conditions that speak specifically to traffic and ask the Planning Board to follow-up and make sure they do their due diligence. In terms of what the building looks like it is in a commercial zone. It could look like a commercial building, like Dunkins', or Market Basket, or Irving and it would fit it. There are people on the Planning Board who will be sure that the building fits in. That is another condition that the Zoning Board could put on the application.

The Chair asked the applicant to make their closing statement.

Jamie Hage said they think there have been some very good questions. They agree that the Town of Warner in 2010 added the workforce housing ordinance and in 2021 amended the use table. The principle behind the state statute and the ordinance is to make workforce housing feasible, not just for the workers but for the developers. If it isn't feasible then developing the workforce housing ordinance is nothing but a mere sham. It puts roadblocks in the development of workforce housing. They think a mixed housing is contemplated in the zoning ordinance. The only way to have feasible development is to have some combination and affordable units with market-rate housing. They are proposing a project where a majority of the building would be workforce housing. That fits squarely within the zoning ordinance and the special exception. He believes they meet the three requirements. This board needs to vote up or down as to the use. They are under a tight timeline but, if the board wants to defer a decision and take more time he suggested they come back in a week or 10 days. The applicant would be happy to come back at that time. Otherwise, they would ask the board to vote tonight, if possible.

The Chair asked if the reading of the ordinances is as Ben says, and he is very good at the reading of the ordinances, is that only 100% of the units have to be workforce housing would this project still be viable. Adam Quinn said that would have to be considered. Mike Quinn said they did the numbers and it doesn't work, whether the town would do something in terms of real estate taxes or there is some other way, they don't know.

George Saunders made a point about the exception. Two individuals stated by voting for an exception we voted to allow this. He thinks the point that it is an exception is an over-stretch of that assumption. The assumption was when we said yes an exception is necessary, that exception would be thoughtful, deliberate and made with all of the facts. He does not think we have sufficient facts at this point in time to judge the merits of this project. We don't know the implications to our school tax. We don't know the implications to our individual property tax. We don't know the implications to our district tax, for those of us in the water and sewer district. He said he was one of those individuals. He is sorry that the deadline is so short for the developer. He sees merits to the project. He is not

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opposed to it on ideological grounds. But, he does not think we have the facts. He doesn't think we can use the exception as a defense to rush the process short of facts.

The Chair said there is a difference between a variance and a special exception. This type of project prior to the 2010 changes would have required a variance which is harder to get. It has more restrictions on it. In 2010 when the town voted to change the requirement for workforce housing to a special exception. A special exception says this use is allowed but it has to go to a public hearing which allows people to bring forth any issues, concerns, questions and give the people of Warner the ability to have a say in the process. Which she thinks is paramount to our form of government and that is what we are doing here tonight. If they can answer those three questions which are required in the application, to the satisfaction of the board. Everyone has admitted that because of the deadline for the funding from the state this process is under a tight timeline. Which doesn't mean we are going to rush a decision tonight. If there are unanswered questions, we can postpone our decision. Or, if we have questions for the town attorney, we have the ability to delay making a decision.

George said he understood that and understood the difference between a variance and an exception. The point he is making it is still an exception and he is not sure 27 people providing comments in a very compressed time frame are going to be judged as adequate input from the town on a project of this magnitude. Beverley agreed with his statement.

The Chair said but, this is how the process works. George said he doesn't need a defense of the process. He is providing his comment to the board. He doesn't need a defense of the process. He also doesn't need a difference of the meaning between two words. He is providing his input to you in the forum that has been provided to him. The Chair said thank you and appreciated that he took the time to participate.

Romeo Dubruiel said in reference to the timeline as he was told by the Town Administrator, as long as the applicant are in the queue and they have an application submitted to the town they would still be considered basically in the queue for the money. He is not quite sure how the timeline works. He was told as long as they have an application to the town the timeline is not a concern. He wondered if someone could clarify that.

The Chair said she understood they need to have an approved building permit provided to the state, although there could be conditions on the permit, by September 2, 2022. Adam Quinn said there will be conditions because of the traffic because the DOT has to approve that intersection for safety. But the town has to give permission to do the project by September 2. The Chair said the Planning Board has agreed to have an additional meeting this month on August 29, because of the timeline. Romeo said it is the Planning Board that approves the permit, not the Select Board. He said is this a building permit application or an application for the lot to be done. Adam Quinn said they still need Planning Board approval after this just to be allowed to put the apartment building on the lot. The Chair asked if the Select Board also has sign off on the project. Adam said, no.

Diane Ricciardelli, Town Administrator, said she is commenting to address the conversation between Romeo and herself. She did not speak about a queue, or where this application stands or how far along it would progress. She thinks she was pretty clear this is not something she is going to speak about because it was going to the Zoning Board and the Planning Board and the process is going to take place like it always does without her input. She doesn't know anything about the deadline or where they stand in terms of

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where they are in the process and being awarded a grant. She does not have an opinion about it. She thanked the Board.

Romeo said he misunderstood the conversation with the Town Administrator. While she didn't use the actual verbiage the word "queue" she did say, verbatim, if the applicants had an application in with the town, not approved, just submitted they would still be in line for the funding from the state for the three-million dollar grant and the town would be receiving one-million dollars. He insisted that is what was said.

Diane R., said she did not know that any of that was true. She can't believe those were the words she used, if that is what Romeo heard she apologizes. She apologized to the board, as well. All those things he said, she does not know to be true.

Judy Newman-Rogers, spoke about the building permit process. If planning or zoning is required on a property that is part of the building permit process, and then the permit is signed off by the Select Board. The building inspector reviews the application and the Select Board signs the building permit. The Chair asked how long the process takes. Judy said it depends on when the board is available to sign and when the Building Inspector is able to sign. How long they want to look at and review it usually it takes a couple of weeks, a couple of days, or it can be turned around on the same day.

Beverly remembers in 2010 when the town voted to allow workforce housing it would never have passed if it was allowed in a business area. Originally it was written not to be in a commercial area. We have so little commercial land anyway.

Jan G. asked roughly what would be the tax value, assessable value, of the property. Mike Quinn said the land and the building would be valued at between seven-and-eight million dollars. Jan G. asked what the taxable value of a Dollar Store would be. Mike said that is the only other company that approached them about this lot was a Dollar Store, there value is about one million dollars. He said they will also generate more traffic.

Harry made a motion to close the hearing. Karen seconded the motion. Discussion: None. Voice Vote Tally: 5 – 0.

The board entered into deliberations.

Jan G. said the one thing they are still trying to nail down is the question of is it truly workforce housing if it is a mix of 15 out of 24 units. Or, is it multi-use. Which category is it in. She said the applicant makes a very compelling argument, but, she isn't a lawyer. She suggests if they can reconvene quickly, like next Wednesday, they could pose the questions to an attorney. She said someone else is going to deal with traffic. Ray Martin says there is plenty of water. Jan G. said the board needs to understand the definition of workforce housing and if it encompasses mixed housing, or does it not. If you put one market-rate unit in the building does that mean the whole project, no longer qualifies as workforce housing.

Harry disagrees, he has read the Master Plan which very specifically talks about workforce housing and the benefit and need for workforce housing. They were so serious about it that they wanted to follow the state law. The state law said they had to draw up a workforce housing article. They drew up an article that as close as possible follows the state. It so strongly states that allowing workforce housing is deemed advisable. They are even willing

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to say that the site plan review and other things could be waived. Because the need is great and the town went through a Master Plan process which is very inclusive, 250 people filled out forms as to what was their vision for Warner. The Master Plan is what the board should be addressing.

Jan G. said she is not saying whether it is or is not a good idea. She thinks they would be better off waiting a week to get an attorney to say whether the applicant's lawyer's definition or other's definition is correct. Because otherwise people are going to say that we helped to railroad something through.

Harry said they are going to get caught up in a timeline. The Chair said they can continue the deliberations of this meeting until next week. The Chair said it set her back a bit when she heard Ben Frost say it would have to be 100% affordable housing in order to qualify for a special exception. Karen said that is what she heard at the Planning Board meeting. She heard Ben Frost say if it is not 100% it no longer qualifies for a Special Exception and it would need a Variance. Jan G. said she believes Ben is wrong. Harry said she believes he is wrong too. Elizabeth was fine with a continuance of this evening's deliberations. Elizabeth said she has Ben's information that he felt was relevant to give us, and we have the applicant's information.

The board reviewed an email Janice sent to the Circuit Rider, Matt Monahan and Ben Frost. The Chair read the email (insert).

Harry said why does our ordinance discuss workforce housing being a certain percentage of different kinds of units. If they were saying the units have to be 100% of workforce housing that is where they would say it and they don't say it. Harry was referencing Page 27 or the Ordinances. He read, workforce housing means housing that is intended for sale and workforce housing also means rental housing. The Chair said what he read on Page 27 supports Ben's point. It doesn't say workforce housing includes market rate housing. The Chair said this is why we should have the attorney weigh in and offer an opinion before they grant or deny a Special Exception on information that is less than clear. Harry asked if they could meet on Tuesday. Janice said she would check for availability of the room, Tuesday is usually a Select Board's meeting.

Harry made a motion to continue the board deliberations on the application for a Special Exception for Comet, LLC., to Tuesday, August 16 at 7:00 PM. Lucinda McQueen seconded the motion. Discussion: None. Voice Vote Tally: 5 – 0.

Beverley said it may be nice to clarify to the Chair of the Planning Board that if what he says is not right, that he does not say it. The Chair said he wouldn't say it if he didn't think it was right. Beverley said we already know what is right, he is a lawyer too, he wouldn't just say that. Harry said it is his opinion. Beverley said, it may not be his opinion, he made it quite clear and he repeated it three times.

Jamie Hage said he would like the record to reflect their objection to postponing the deliberations for the reasons that have been articulated in the hearing. Secondly, he would like to know who the town counsel is. He would like an opportunity to discuss it with him or give a rebuttal before the hearing next week. Karen asked if we should even be taking this commentary. The Chair said it was a point of order.

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Harry asked about ex-parte conversations because Attorney Hage would be speaking with our attorney. The Chair said the conversations with our lawyer can be non-public. She thinks it will be obvious in our deliberations what the answer from the lawyer was, even though we may not get a yes, or no answer. Harry said it is disturbing that the answer the lawyer gives isn't even something that we can discuss here in public.

Elizabeth clarified the question to the lawyer is going to be whether or not our ordinance allows for 100% or less than 100% workforce housing in a building.

Harry said what if the applicant can't handle the project under those circumstances and he would want a different quota would that require a variance from the article. The Chair said at that point it would probably be too late to present a different plan. If they do not get a special exception there is no use in them going to the Planning Board on August 29th. Harry said there is a good possibility that a workforce housing project that might have had great value to the town could be jeopardized simply because the town wanted it perfect, they wanted it 100%. It certainly doesn't seem like that is what the Master Plan feels like, to him. There was a very clear statement that the town wanted workforce housing. The Chair said they have to go with what the ordinances requires.

Harry asked if this an issue the Planning Board can decide. Can we just mine our own business and decide just if the use is permitted. The Chair said we are deciding if the use that is permitted is workforce housing and if the definition of workforce housing is that it has to be 100% affordable housing to qualify for a special exception we need to know that. The Chair said she would like to know that before they go into deliberations. If it can be a mix of affordable and non-affordable housing then the application as presented does qualify as workforce housing. Harry said the Planning Board are the one's that wrote the ordinance that is unclear, it is their problem.

3. REVIEW OF MINUTES OF PREVIOUS MEETING: July 13, 2022 Minutes

The Chair noted it was 9:45 PM and asked if everyone was okay with delaying approving the minutes to the next meeting. No one opposed the suggestion.

Beverley (on Zoom) asked if she could withdraw from the meeting. The Chair thanked her for her contributions.

4. UNFINISHED BUSINESS

A. Rules of Procedure Document – Not discussed.

5. COMMUNICATIONS AND MISCELLANEOUS

The Chair said the Planning Board has asked the ZBA to come up with any questions they might have on Short Terms Rentals. They will be having a joint meeting with the Planning Board and the Select Board. The Chair asked members to think about questions and email the questions to Janice. Anything they think needs to have a better definition or anything that may help with a possible ordinance in Warner. Harry asked Janice if they address Short Term Rentals in the Master Plan. Janice said it was before Short Term Rentals became an issue. Beverley who hadn't left the meeting yet, said she is very interested in talking about Short Term Rentals. The Chair asked Beverley to forward her concerns or questions to Janice.

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6. ADJOURN

Lucinda made a motion to adjourn. Seconded by Elizabeth. Voice Vote Tally: 5 – 0
Meeting adjourned at 9:48 PM.

Respectfully submitted by,

Janice L. Loz

Attachments

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ATTACHMENT 1 **PUBLIC COMMENT**

24 unit Apartment
Martin Vincent <mtv@tds.net>
Sat 8/6/2022 1:10 PM
To: Janice Loz - Landuse <landuse@warnernh.gov>

This project does not belong in Warner! The taxes collected cannot possibly cover the cost of services and especially the increase of school tax due to the addition of 20+??? children into the system. The other taxpayers will be left to subsidize these new families in an already over-taxed situation. Also, where are these people going to find jobs in Warner that pay enough to cover the expenses of the units?? There is not a need for workforce housing beyond what is currently available – this is a feel-good solution to a problem that really doesn't exist. Let us not screw up what rural conditions remain in this town.

Martin Vincent

Burnt Hill Rd.

Sent from [Mail](#) for Windows

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24 UNIT DEVELOPMENT ZBA meeting for aug 10th 2022 meeting

ATTN. ZBA Board

Romeo Dubreuil <rdcarpenter1@aol.com>

Sun 8/7/2022 1:38 PM

To: Janice Loz - Landuse <landuse@warnernh.gov>

Cc: Romeo Dubreuil <rdcarpenter1@aol.com>

I would plead with the board to please! read this letter after the application is accepted for review and before discussion of denial or approval of the application begins.

The concern for the time frame for this application as mentioned by the planning board chair at the conceptual review is, as I understand it, not really a concern. I was told by the town administrator that as long as the applicant is in the process and have (excepted applications in with the town) that they will still be eligible “conditionally” providing that it passes and is approved and still be approved for the 3 million to the developer and the one million to the town.

The infrastructure that supplies this 24 unit housing project is already built I do not remember when I was on the P.B at the time that we approved that or that it was ever presented to the board, surely there was no mention of a 24 unit workforce housing structure. I reviewed the minutes and could not find any such language. There was language to accept the infrastructure for lot 4.1 dunkins is on lot 4.2 and this is on lot 4.3 the shared driveway was for lots 4.1 and 4.2 but only 4.2 has an exit drive the 4.1 lot only has an “entrance” drive so that will mean that one exit at dunkins will service all 3 lots. I ask the board to require an independent traffic study (engineer for traffic study to be chosen by the ZBA not the contractor) be done to confirm the viability of this application. As allowed by RSA 675.5,v afterwards the planning board may use this same study in there review process and there will be no replication of the same “independent” traffic study.

Has the town completed any studies that shows we are not meeting the needs as required by workforce housing law? We have housing units near Pumpkin hill road, Pleasant Pond Estates, and many independently owned housing apartments located throughout Warner. How will these 24 units impact the school system and tax implications to current Warner residents.

Lastly, is the town well and sewer system. When I was on the P.B. it was mentioned several times that the town water supply was of great concern of going dry and it`s capabilities to accommodate the precinct`s needs in the future. Now we are being asked to provide 24 new household`s with ample water in the foreseeable future. My recommendation is the board either require a bond to cover this or some certainty that this will not kill the towns current depleting water supply. Please confirm aforementioned as the Dunkin donuts application was some time ago.

Respectfully

Romeo Dubreuil

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Dick Mueller <muellerrja@gmail.com>

I heartily approve of this construction. No matter how many units, nor how much the rent is, it will add much needed housing.

Even if the rents are high, this will open up cheaper housing in other parts of town.

Regards,

Dick Mueller
94 Route 127
Warner, NH 03278
Home: (603) 746-6864

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ATTACHMENT 2

Email communication between Planning Board Chair and Land Use Office

From: Ben Frost <benjamindfrost@gmail.com>
Sent: Thursday, August 11, 2022 11:01 PM
To: Janice Loz - Landuse <landuse@warnernh.gov>
Subject: Workforce Housing

Hi Janice -

If this would be helpful, please forward it to Mike Courtney for his consideration.

My statement that a multi-family workforce housing development should consist of 100% workforce housing units is based on my reading of the use table and other provisions of the Warner Zoning Ordinance. In the residential section of the use table, both multi-family housing and multi-family workforce housing are listed, meaning that there must be a difference between them. Multi-family housing isn't allowed in the INT District but multi-family *workforce* housing is allowed there by special exception.

Multi-family housing is subject to a 4-unit-per-building limitation (WZO IV.K) but multi-family *workforce* housing is not subject to that restriction (see WZO XIV-A.C.1), meaning that there is no inherent limitation to the number units that may be built on a site if the development is for multi-family *workforce* housing (other factors will constrain a site's capacity for units, such as maximum allowed building height). If a developer is proposing multi-family housing, they may use the incentive section in WZO XIV-A.C.3 to add up to 30% more units than allowed, provided at least 15% of the total units are workforce housing. But remember that this cannot be done in the INT District, where multi-family housing is not allowed (only multi-family *workforce* housing is allowed there by special exception). The incentive system and its accompanying 15% requirement only makes sense when applied to multi-family housing, and not to multi-family *workforce* housing (no density bonus is needed).

I hope this helps.

Ben