



TOWN OF
NEW LONDON, NEW HAMPSHIRE

375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

**ZONING BOARD OF ADJUSTMENT (ZBA)
MEETING MINUTES
Tuesday, July 2, 2019
Whipple Hall
6:30 PM**

The meeting was originally posted for Town Office conference room, and was rescheduled to Whipple Hall, 429 Main Street, due to the expected large turnout.

MEMBERS PRESENT: Douglas W. Lyon (Chair), W. Michael Todd, Frank Anzalone, Katharine Fischer, Stan Bright (Alt), Heidi Lauridsen (Alt), Bruce Hudson

MEMBERS EXCUSED: Ann Bedard

STAFF PRESENT: Nicole Gage, Zoning Administrator

OTHERS PRESENT: (see sign-in sheet in file)

1. **Call to Order** – Chair Lyon called the meeting to order at 6:30 pm.
2. **Roll Call** – Chair Lyon called the roll.
3. **Review Minutes of May 21, 2019**

IT WAS MOVED (Michael Todd) AND SECONDED (Heidi Lauridsen) to approve the minutes of the May 21, 2019 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

4. Case ZBA19-11 – Variance

Parcel ID 059-018-000, 166 County Road and 059-014-000, Newport Road.

Zone R2

Owner: Dorothea G Beweley Revocable Trust

Applicant: Continuum Health Services, Inc. c/o Atkins Callahan, PLLC

A variance is requested from the provisions of New London Zoning Ordinance, Article XXVI (Workforce Housing Overlay District) Section E (Permitted Zone Districts) to permit multi-family workforce housing in the R2 Zone.

Chair Doug Lyon explained that although the town office received several letters asking him to recuse himself, he has consulted with town counsel and was advised it would not be a conflict of interest for him to chair the meeting tonight. He does not have any personal interest in the project and the hospital has no financial interest in the project. He plans to be objective, nonpartisan and non-biased.

When this application was originally submitted, it included three parcels of land and subsequently one of them was dropped from the plan. Prior to receiving this information, the residents of Great Pines were sent notices and therefore may be in attendance tonight.

Bruce Hudson has been a resident of Great Pines for over 15 years. He is also on the Board of Directors for Great Pines but has assured everyone in attendance that he will be honest, fair, equitable and as objective as possible.

Jim Callahan, an attorney from Peterborough, New Hampshire attended the meeting representing Continuum Health Services. They are requesting a variance for parcel 059-018 on 166 County Road and 059-014 on Newport Road as they are in the R2 zone. Lot 13 is no longer part of the application. Also present is Joe Hogan, Chairman of Continuum, Wayne Morrill, an Engineer with Jones and Beach Architects and Michael Black project manager for this project as well as the New London Place project. The New London Place project is not a joint venture with the hospital.

Attorney Callahan stated that this is an application for workforce housing which is not the same thing as subsidized housing. Municipalities need to provide reasonable and realistic opportunities for the development of workforce housing. New Hampshire legislature enacted the New Hampshire workforce housing law which is contained in RSA 674:58-61. This is a mandatory obligation unless the municipality can demonstrate that there is a sufficient housing stock. Following this statute that was enacted in 2009, the town of New London changed its zoning ordinance and enacted the workforce housing overlay district contained in article 26. The reason they are here tonight is because under article 26, section E, in the R2 zone, the only type of housing permitted is single family houses, manufactured housing and two family dwellings. The project they are proposing contains multifamily housing which is not permitted in this zone so a variance would be required. Currently in New London there are zero rental properties for a family of three that meet the criteria for affordability.

In New London, there are two properties listed for sale that could possibly fit the bill for the project they are proposing. There is a six acre lot on Little Sunapee Road owned by the church of Latter Day Saints that would retain mineral and water rights, there is no public sewer and it is also in the R2 zone. The other is a 28 acre lot on Pleasant Lake Road and there are wetlands, no sewer and also in the R2 zone. There is no other available land for a project like this.

It has been widely reported that there is a significant shortage of affordable housing in New Hampshire. In 2018, the New Hampshire housing finance authority reported that there was a shortage of between 3,500 - 4,000 affordable housing units in the Sunapee/Upper Valley region. This reflects an urgent need in the state for affordable/workforce housing. The people that qualify for workforce housing are Fireman, Police, Nurses, Health care Workers, First Responders and skilled trades people. Dr. Joanne Conroy, CEO of Dartmouth Hitchcock Health reported there are currently 1,000 unfilled jobs there.

Variance Criteria:

1. Granting the variance will not be contrary to the public interest.

In the 2011 Master Plan, the need for workforce housing was acknowledged in New London. In the Master Plan there is a recommendation that states "the town should consider amending the zoning ordinance to respond to Senate Bill 342, on workforce housing by:

- a. Allowing multifamily dwellings in residential zones where properties are served by public water and sewer either as a permitted use or a use permitted by special exception.

The property is entirely located within the Workforce Housing Overlay District.

2. The Spirit of the Ordinance is observed

In the beginning of the ordinance there is usually a purpose clause. In article 26, section A, it states "the purpose of the article is to provide reasonable opportunities for development of workforce

housing in New London for both home ownership and rental opportunities. The town recognizes the importance and benefits 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.

The spirit of the ordinance is clear and by proposing workforce housing they are meeting the spirit of the ordinance. In this case, a large multi-unit development is on one side and on the other side there is a large commercial development. The proposed project would blend in and it is ideally located for workforce housing since there is public water and sewer since this facilitates affordability.

3. Granting the variance would do substantial justice

Attorney Callahan quoted a passage from the book called *The Board of Adjustment in New Hampshire*, which states “it is not possible to set up rules that can measure or determine justice. Each case must be individually determined by the board members. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications. The Board of Adjustment cannot alleviate an injustice by granting an illegal variance

Attorney Callahan believes in this case there is no public benefit that would outweigh the hardship to the applicant or the community. Granting this variance would do substantial justice in that skilled laborers will be able live where they work and will be able to avail themselves of affordable housing. Having these workers living in New London will contribute to the vitality of New London and help employers retain and attract skilled employees necessary to the continued provision of services to town residents.

4. Values of surrounding properties will not be diminished.

The applicant has consulted with a New Hampshire licensed appraiser, Douglas Whitney that reviewed the application and the project and concluded that “after reviewing the information it is clear that the proposed use is of no negative consequence to the use or the neighborhood and is consistent with what is there now. This also is harmonious with the other commercial and residential uses to what is currently almost exclusive commercial neighborhood. Therefore, it is my opinion that the proposed use of the property will have no negative effect on the abutting property values. It is an improvement to what is there currently.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

The purpose of the ordinance is to provide reasonable opportunities for the development of workforce housing within New London for both home ownership and rental opportunities. Article XXVI E. Permitted Zone Districts of the ordinance however does not provide for Multi-Family Housing in the R2 zone. There is no stated purpose outlined in the ordinance explaining why Multi-Family housing is not allowed on properties located in the R2 zone that are also within the workforce housing overly district. Arguably, exclusion of multi-family rental opportunities given the correlation of construction costs to rents charged would never allow for affordable workforce rental housing. This property is unique in the sense that it has municipal water and sewer as well as close, walkable proximity to several of the town’s major employers. And as noted, there are no similar properties in the town.

ii. The proposed use is a reasonable one
Providing affordable housing for skilled labor is very reasonable, especially in light of the lack of affordable housing in the region. A shortage of skilled labor in New London, the Upper Valley, and New Hampshire, a problem exacerbated by a lack of affordable housing, has been well reported. The board and citizens should consider the following questions: who will provide health care services? Police the town streets? Teach the towns children, respond to emergencies? Allowing these professionals and skilled laborers to live where they work is incredibly reasonable and will insure that New London continues to remain a vital and robust community. Attorney Callahan stated that part B is the special conditions prong of the criteria and there has been a great deal of disagreement in this area. A narrow reading of the criteria would be that if some or any use could be made of a property, then no variance is warranted. A broader reading would allow anything to go so there has to be a happy medium. This property cannot be used in strict conformance with the ordinance.

Attorney Callahan believes he doesn't need to review the last part as he has satisfied the first part of the test. In light of everything that has been stated, he respectfully requests the application for a variance be granted.

Chair Lyon stated that it has been determined that they could develop under the existing rule without a variance but it would not be economical. The developer could put housing on this site that wouldn't require a variance. Chair Lyon asked what studies have been done to demonstrate this. Attorney Callahan replied that he doesn't have any third party evidence but part of what makes it affordable is the availability of public utilities such as water and sewer.

Michael Black of Continuum stated the site is one of the better ones in town and they have looked for a while. The two lots combined are 4.6 acres, high and dry and has all the utilities. It is close to the senior living project they'd like to build. They could build on the site but under the current zoning, each house would need two acres. They can't build workforce housing with one house on two acres as that is not feasible since it is too expensive.

Katharine Fischer commented that the proposal is for eight buildings with five units in each. Have they considered bringing that number down? Mr. Black stated when they go before the Planning Board; they will review the plans to determine if they are doing the right thing. They have invested a lot of money but didn't want to invest too much before they got a variance to determine if they could move forward. It is a process.

Frank Anzalone asked how many bedrooms in each unit. Mr. Black replied they are two and three bedroom units and the bottom units are three bedroom which may be turned into handicap units. These are townhouse style units. Mr. Anzalone asked how much each building would cost and Mr. Black stated they are still working on the final engineering so don't have accurate numbers at this time. When the engineering is done there may be less units. Mr. Anzalone asked for a best guess and Mr. Black replied \$130,000 – \$150,000 per unit but it depends on several factors.

Michael Todd is trying to determine the amount of bedrooms to get a sense for how much of a density increase this project will represent. From there they can examine the effect it will have on the health, safety and welfare of the community. This will help them to assess the impact it will have. There was also a discussion regarding the income requirements. Mr. Todd asked if occupancy was limited to a specific list of trades. There are no restrictions stating the applicants have to have a job in New London so it is conceivable that the occupants living in the development may not be hospital employees, police officers or first responders. Mr. Black responded no, there aren't limitations related to specific trades. There is a process to go through to get tax credits to help offset the cost of the buildings.

Stan Bright had concerns that they don't have a good handle on what the impact will be, how many units etc. and would like more detailed information. Frank Anzalone agrees but feels it is the Planning Boards job to oversee that. Mr. Black stated they would need to spend a lot more money to obtain this type of detailed information.

Peter Stanley stated there is a flaw in the argument for a variance. Multifamily housing is permitted in portions of the R2 zone. These portions fall within the Planned Unit Development (PUD) overlay and the lots in question fall within this so we may be talking about a variance that isn't needed. Considering this at this point is not realistic. He also noted that with regards to the hardship criteria, the description that the property is on town water and sewer does not set this apart from other properties in the area. He would have liked to have heard a serious discussion about how this parcel is unique. Under the workforce housing regulation, density could be waived and there could be a number of duplex housing units that could provide housing.

Steve Root noted that the Chair asked the question as to whether something else could be done on this property. The answer was if you apply the R2 requirements of two acre lots than it won't be workforce housing. Mr. Root stated that the Planning Board can waive that density requirement. The real question is could you build an economically sensible development that is workforce housing that is not a multi-family. You could build one and two family housing units knowing you could put more on the property than just one every two acres.

Mr. Root does not dispute that workforce housing is extremely important and something that the town needs to do. The uniqueness argument is not valid since there is water and sewer available on many properties within proximity to employers. The only submission as to what makes this unique is that it happens to be for sale. He submits that being available on the market is not a feature of uniqueness that can be taken into consideration because any property could eventually be for sale.

Corey Drew is representing the Board of Directors at Hilltop Place. He stated there is nothing about a proposal for workforce housing that is objectionable to anyone at Hilltop. What is objectionable is that there are forty proposed units on a less than five acre site. The density is literally 20 times that of the permitted density. It is clear from the Planning and Zoning regulations that the purpose is to regulate and enhance public health, safety and the general welfare and to encourage the appropriate and wise use of land. Zoning ordinances aim to lessen congestion in the streets, promote health and general welfare, to prevent overcrowding of land and to avoid undue concentration of population. He suggests that the plan before the board currently does the opposite of these things. This site is widely insufficient to support the number of units proposed in the plan. There is no other district in town where the density of this use would be permitted under this lot arrangement.

To state that this property is unique is not true. There is no unique aspect of this property that has such an interesting aspect to it that it demands that all other zoning be waived in favor of putting in a highly dense project that will do nothing but increase traffic in the area. The increased density in traffic will negatively impact the area. There are other sites in town that could support this better. Mr. Black disputed this fact. Just because it is going to be close to New London Place does not make it unique in a way that champions granting a variance. There is also no truth that there can be restrictions placed on who can rent these units. The RSA is very clear that as long as you meet the underlying income restrictions, you are entitled to live there.

The spirit of the ordinance is not observed in this plan. While workforce housing is an admirable goal, there are appropriate places for it. Setbacks and other issues are not observed with the plan proposed. One of the setback requirements in the workforce housing zoning regulation provides for a 100 foot buffer on each side of the workforce housing. On a 4.6 acre lot this is impossible with the amount of proposed structures on it. Mr. Black stated it would be the purview of the planning board

to work through this issue once they get to that point. Mr. Drew stated the board should consider enforcing the conditions as it relates to setbacks. The variance fails to satisfy in a number of areas.

Mr. Drew has obtained a letter from a local realtor that suggests that there would be a diminution in value.

Nicole Gage wanted to note for the record that Mr. Drew submitted several handouts for the board to review.

Bruce Soper stated that twice Mr. Black referenced tax credits. This is an IRS section 42 device to benefit people that loan money for a project. Because it is Federal you lose some control because the federal government has rules and regulations that go along with the building of whatever is used in tax credit. Therefore, New London would lose some local control.

Deb Langner read a letter on behalf of her mother Hazel Merchant. Ms. Merchant lives at Hilltop and wrote "The density of this housing project will totally change the character of my corner of Hilltop Place. Right now, this area is pleasant and quiet. I look out at pretty stone walls and big old trees in my back yard. This lovely, peaceful setting enhances the value of my unit. The size of this planned construction will take out most of the trees in this area and open it up to all the noise, confusion, odors and dirt coming from the Gallery shopping area and the shopping plaza on the other side of Newport Road. The project itself will take away any privacy I have. This condo represents a good portion of my financial assets to cover my end of life care. My husband and I worked our whole lives so that we would have enough resources to cover expenses when we could no longer take care of ourselves. My unit at Hilltop Place is part of the resources I'll need to finance my entrance into a good assisted living facility or nursing care should that be necessary. This housing project is diminishing one of my biggest assets to fund my future healthcare benefits. Continuum needs to rethink the amount of housing planned on this property or use one of the other parcels available in New London".

John Raby commented that the basic principle here tonight is how to reconcile meeting the need for affordable housing with the equally legitimate desire of the people at Hilltop to stay economically secure in their property and to live in peace. Right now there seems to be doubt whether the property Continuum is proposing is unique. He believes that we should have an engineering study in hand so the data under consideration is more substantial. He also believes that workforce housing would increase the possibility of people moving in that would stay in town and work in the public safety fields and with their hands. We need both for the community to maintain and preserve its character and keep going.

Marilyn Soper noted that Mr. Callahan mentioned he had an appraisal from Douglas Whitney. Ms. Soper found information online that stated he has been brought up with the appraisal board for falsifying appraisals in the past. She would question whether this man could be trusted with an appraisal value.

Ms. Soper also had a comment related to the HUD median income which is 60%. That is based on a household of three. When HUD looks at those numbers, they look at people that are 15 years and older who are providing income to that family unit. It is the combined family income of \$50,060 that is taken into account as the basis for affordable housing. It's not just one person making \$50,000. It's three making the total of that.

Patricia Rogers is a resident of Hilltop Place. She stated she understands they are asking the board to grant a variance on a plan that may change substantially. Her concern is related to fire safety. The proposal shows only one entrance and exit from this development. There isn't room to turn around a

fire truck which is contrary to public interest since there isn't adequate safety in the current plan. Will we need new fire trucks so they can get into the tiny entrance. The fire safety issue alone should end this.

Stephen Solomon is also a resident of Hilltop Place. He is a former attorney and wants to address the hardship issue. One of the things he understood about hardship was that it meant is that the specific characteristics of the lot made it impossible to development the lot according to the uses permitted in the zone. This usually involved a lot that was too narrow, oddly shaped or too wet so you needed a variance to make reasonable use of the property. There is nothing about this property that prevents its use as permitted by the zoning ordinance. Saying it is a hardship because it has water and sewer? That's not a hardship, that's a benefit. They may not be able to use it because it's too small but that's not a hardship. Most of the arguments are financial and the laws are clear that the applicant cannot establish a hardship based on its financial hardship. That is irrelevant and should not be considered by the board.

Attorney Callahan stated that any life safety issues would be addressed at the Planning Board. That analysis happens there. With regards to the appraiser, that is the first he has heard of that and he has known him for a long time. He still has a New Hampshire license and he can't speak to whatever it is he did. If he did do something wrong, it wasn't to the extent that he lost his license.

IT WAS MOVED (Michael Todd) AND SECONDED (Frank Anzalone) TO DISCUSS. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Lyon asked for comments related to public interest. Katharine Fischer stated it starts to look like spot zoning to her. The R2 district clearly does not provide for this kind of density. If they accept this they are essentially spot zoning. Frank Anzalone commented that they could say that about almost any project that has come in and asked for a different use in a different zone. That is why they are here.

Michael Todd stated he is not convinced, based on what he has heard that this proposal would not have an adverse impact on the character of the neighborhood. He has heard testimony that it would increase the density, there could be an increase of at least 88 cars and there is only one method of entrance to the development that could cause hazards in terms of emergency response. He has not heard evidence that the property is physically unique which would make the application of the ordinance to it unreasonable.

Chair Lyon stated he was a Selectmen when the round-a-bout was engineered and installed and it is designed to handle 2500 cars and hour. Currently we have about 7500 cars a day. This project would have a negligible impact on traffic.

Stan Bright stated there was conflicting opinions about the value of surrounding property being diminished. It is not clear what the impact is. Frank Anzalone stated the difficulty he is having is that looking at the plan it is hard to say if there will be impact or not because we don't know if the buffer is staying or going. These are items that fall under the purview of the Planning Board. The Planning Board has the authority to impose conditions and make exceptions.

Bruce Hudson asked if the board was convinced that they have enough information to move forward to make a decision. Frank Anzalone does not feel there is enough information and has a list of several conditions he would impose. Chair Lyon stated that what he is hearing is that board members are uncomfortable with the amount of information they have received. Michael Todd stated there were also packets of information presented tonight that they haven't had a chance to go through.

Heidi Lauridsen would like to get feedback from the Fire Chief.

Attorney Callahan asked if the hearing could be continued to the next meeting. If so, the board could explain what information they need to make a decision they could provide it then. Katharine Fischer stated that they are required to address the five criteria and need to be clear about what information they want. They can't give a full blown project plan as that isn't feasible. Chair Lyon asked if the board was convinced one way or the other that the applicant has satisfied all five criteria. Frank Anzalone stated that in order to make workforce housing work you have to have that density. Where in town can you put a multiple family of that density where it is allowed? The dilemma they are facing is that they are uncomfortable with the state of the development of the project and how it impacts various criteria. They also understand the reluctance of Continuum to spend a lot of money designing a project before they've gone to the Planning Board.

Corey Drew stated the applicant bears the burden to establish their case to the Zoning Board. The fact that you need more information is not the fault of the board and it is the applicant's issue to address and does not justify a continuance to be able to come back and provide more information. If the board decides to grant a continuance, it would be equitable to take more testimony from the opposition, abutters and other members of the public regarding issues presented. Chair Lyon stated that is correct and he would allow for comments from the audience. It wouldn't just be information from Continuum.

The Board decided they would like the following additional information:

1. Number of units
2. Potential or lack of potential to put restrictions on who can live in it.
3. Life safety questions related to the fire department specifically
4. Comments on buffer zone that might impact property values of neighboring properties.

IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to continue the hearing to the July 16, 2019 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

5. Other Business

Nicole Gage stated that on August 14, 2019 the New Hampshire Municipal Association will be offering a ZBA Basics in New Hampshire webinar for ZBA members. Ms. Gage will send the information out to members via email.

The ZBA members will meet with legal counsel on July 9, 2019.

6. Motion to Adjourn

A MOTION WAS MADE (Bruce Hudson) and SECONDED (Michael Todd) to adjourn the meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 8:45pm.

Respectfully submitted,

Trina Dawson
Recording Secretary
Town of New London