

**Concord Area Trust for Community Housing  
Route 103 (Lot 35-4-3)**

**SUPPLEMENTAL STATEMENT OF FACTS AND LAW IN SUPPORT OF  
APPLICATION FOR SPRECIAL EXCEPTION AND VARIANCE**

This Supplemental Statement of Facts and Law is submitted on behalf of the Concord Area Trust for Community Housing (“CATCH”) in support of its application for a special exception and variance dated March 19, 2025 (the “Application”) to permit multi-family affordable housing (the “Proposal”) on certain real property located at on Route 103, identified as Tax Map 35, Lot 4-3 (the “Property”), owned by Comet LLC (the “Owner” and, together with CATCH, the “Applicant”). The applicant requests that the Zoning Board of Adjustment (“ZBA”) approve this Supplemental Statement of Facts and Law, together with the Statement of Facts and Law submitted with the Application, as the specific findings required pursuant to RSA 676:3, I.

At the hearing held on April 9, 2025, before this matter was continued pursuant to the findings of a potential regional impact, several questions were raised by members of the ZBA and in written submissions from neighbors. The following is some additional information to address those issues and questions:

**Impact on Local Schools:**

At the April 9, 2025 hearing, there were questions raised regarding the impact of new students on the local school district. Of the 48 proposed units, not all of them will house children. For example, many of the potential residents who rely on the sort of affordable housing that would be created by the Proposal would likely be elderly or retired individuals who either did not have children, or whose children have already grown to adulthood. More importantly, many of the potential families who have children are already living in the area and already attending the local schools. In many cases, the expected residents are not families moving into the area from a different area, but are families who already live in the area, but may otherwise be forced to move away due to a lack of affordable housing.

Based on statistics from CATCH’s other projects, CATCH expects that the Proposal will bring fewer than twenty (20) new children into the school district, all of varying ages (*i.e.*, some will be elementary school age, some will be high school aged).<sup>1</sup> Following the April 9, 2025 hearing, Tom Furtado met with John Fortney, the superintendent of the Kearsarge Regional School District to discuss whether there would be any concerns with new students coming into the school district. Mr. Fortney indicated that there would be no concerns with that many new students entering the school district.

To the contrary, Mr. Fortney indicated that the school district needs additional children. Attendance in the school district has been declining over recent years. According to the New

---

<sup>1</sup> For example, at CATCH’s most recent development in Concord, New Hampshire, there are 19 children currently living in a 48 unit development (the same size as the Proposal). Of those 19, only 11 are school aged. Of those 11, 4 children were already in the Concord school district. In total, a 48-unit development in Concord resulted in only 7 new school children added to the public schools.

England School Development Council, attendance at the Kearsarge Regional School District has declined by 164 students over the past ten years – a reduction of almost 10%. Additional children would benefit, not burden, the school district in multiple ways. Most directly, educational funding from the State of New Hampshire is based on a per pupil calculation. The more students in the school district, the more funding the school district receives from the State. That funding would benefit the school district.

The Proposal would benefit the local school districts in other ways as well. Mr. Fortney shared examples of difficulties the school district has had hiring or retaining teachers due to the lack of local affordable housing. Recently, the school district has offered positions to teachers who ultimately declined the position specifically because they could not find affordable housing on what the school district pays for a teacher.

In short, the school district currently needs additional students (and those additional students come with additional funding from the state) and needs affordable housing for teachers. This Proposal will provide both. If teachers cannot afford housing, the school district would need to pay teachers more. If attendance (and therefore state aid) continues to decline, then that increase in pay would need to be met solely with local taxpayers. This Proposal helps alleviate that situation.

### **Impact on Municipal Services**

At the April 9, 2025 hearing, there were some questions about the height of the building and whether the height would prove problematic for fire safety. The height of the building is confirmed to be below 45 feet and is fully compliant with the Warner Zoning Ordinance in that manner.

Nevertheless, out of an abundance of caution, Mr. Furtado contacted the Hopkinton Fire Chief, Jeff Yale, as we understand that the Town of Warner relies on Hopkinton's Fire Department for ladder trucks in the event of a fire. Chief Yale indicated that the height of the building would not be a problem. Chief Yale's priority was access to all sides of the building, including making sure that the building would be close enough to the public highway to have access on that side. When he was informed that the building was planned to be 20 feet from the property line, he indicated that that would not be a problem at all. Therefore, the requested variance would support, not endanger, fire safety.

Similarly, the project engineer, Benjamin Osgood of Ranger Engineering Group, Inc., contacted the superintendent of the Warner Village Water District, Charles Come. Mr. Come indicated that both water and sewer systems have more than enough capacity to accommodate the Proposal.

### **Impact on Traffic**

One of the advantages of the Property for this Proposal is the proximity of local businesses and Interstate 89, which means that the majority of vehicle travel from the Proposal will either be contained in the immediate area, or directly funneled onto the interstate highway. In other words, there would not be a meaningful increase in traffic through the more rural residential parts of

Warner, and no impact on the rural atmosphere of those communities. By concentrating affordable housing in this area, that reduces the negative impacts that Warner could suffer if affordable housing were spread throughout town, while avoiding the losses that would arise if there were no affordable housing at all (such as the lack of school teachers, discussed above).

Traffic issues will be more specifically addressed with the Planning Board based on their Site Plan Review regulations, as well as with the New Hampshire Department of Transportation (“DOT”), which of necessity must occur after the Application is approved by the ZBA. Accordingly, some of this information may be changed depending on the discussion with the Planning Board and DOT. Nevertheless, without attempting to limit or restrict the review by Planning Board or DOT, the Applicant can provide some basic information as context for the ZBA.

Based on statistics from the Institution of Transportation Engineers, collected from studies performed across the United States, multi-family affordable housing developments like the Proposal are expected to produce approximately 192 vehicle-trips per day (total in and out). During peak hour traffic (*i.e.*, rush hour traffic times), this is expected to be approximately 25-27 vehicle trips (in and out) during the morning and afternoon rush.

On average, this would mean that during peak traffic times, there would be one car going in or out of the driveway once every two or two and a half minutes (both entering and exiting). By comparison, the adjacent Dunkin Donuts is calculated to result in approximately 249-477 vehicle trips per hour during the weekday peak traffic times (morning and afternoon, respectively). In other words, the Proposal would produce between 4.5% and 10% of the traffic that is produced by the Dunkin Donuts next door.

Additionally, it is important to recognize that this traffic increase cannot be considered in a vacuum. As discussed in more detail below, the impacts of the Proposal cannot be considered in comparison to an empty lot, but must be considered in comparison to other potential uses that are available on the Property as of right. In other words, it is less important whether the Proposal will produce traffic that does not exist currently, but how much traffic will result from the Proposal when compared to a retail establishment, hotel or motel, or an office building – all of which could be built on the Property without requiring any ZBA approval.

For example, the Property could support a 10,000 square foot retail location, such as a CVS, Dollar General, or similar location. Based on Institution of Transportation Engineers statistics, such a use would result in peak hour vehicle trips of over 55 per hour, more than twice what would be expected from the Proposal. This would be one vehicle using the driveway every minute. Therefore, approving the Application would result in less traffic than if the Application were denied and the Property put to some other use.

### **Impact on the Warner River and Wetlands**

The Federal Emergency Management Agency (“FEMA”) has determined the flood plain for the Warner River to be at the elevation of 421 feet. The lowest elevation of any portion of the Proposal is located at 422 feet of elevation – one foot above the floodplain. The lowest elevation of the building itself is at 435.84 feet, almost 15 feet above the floodplain. There are no proposed

improvements or grading within the floodplain. Flooding is not a concern. Certainly, there is no reason why a multifamily residential development would have a greater risk of flooding than a commercial retail or office space development.

Likewise, the existing wetlands on the Property were delineated by a New Hampshire Certified Wetland Scientist. These wetlands are generally located on the south side of the development, with a small stream running between the Property and the adjacent Dunkin Donuts property. The Proposal does not impact these wetlands. The Proposal has been designed to meet the New Hampshire Stormwater Standards which will be reviewed by New Hampshire Department of Environmental Services (“DES”) through the Alteration of Terrain permit process.

Without attempting to limit or restrict the review by DES, the current proposal captures stormwater run off and routes it through a system which provides water treatment prior to discharge through an infiltration system. This system is combined with deep sump catch basins for pre-treatment. The design also accounts for snow storage during the winter to prevent snowmelt from running off into the wetlands. Additionally, during construction, the wetlands will be protected by erosion control devices that are regularly inspected and maintained.

### **Impact on Endangered Species**

The Applicant understands that the Warner River and adjacent wetlands are home to endangered or threatened species of turtles. The alteration of terrain permitting process with DES requires a wildlife study by a qualified wildlife biologist. After that study is completed, an appropriate turtle protection plan will be developed if required.

### **Workforce Housing Requirements**

There was one question raised regarding whether an approval of the Application should be conditioned upon a requirement that the Property be used for workforce housing in perpetuity. This would be a redundant condition that is unnecessary under the current zoning ordinance. The Property sits in the Warner Intervale (INT) Overlay District, part of the Commercial (C-1) District. The INT Overlay District permits multi-family workforce housing by special exception but does not permit any other type of residential use – multifamily or otherwise. In other words, that requirement already exists – the Property could not be converted to market rate housing without a new application to the zoning board.<sup>2</sup> Such a condition would be pointless at best, or at worst create an ambiguity in the future. For example, if decades from now, economic conditions changed or for whatever reason, the Town of Warner decided it wanted to allow market rate housing in this district, such a condition would not prevent this Property from being used for market rate housing consistent with the new zoning ordinance anyway.

In short, the Application seeks to use the Property for multi-family workforce housing. The existing zoning ordinance means that any other multi-family housing would require a new application. Any other non-residential use would likewise be controlled by the zoning ordinance and would not be impacted one way or the other by this Application.

---

<sup>2</sup> Additionally, the federal program that the Applicant intends to rely upon for funding includes restrictions that the Property be used for low income housing for at least sixty years.

## **Aesthetic Value of Retaining Open Land**

Finally, there was some discussion at the April 9, 2025 hearing about whether it was preferable to maintain the Property as open land due to aesthetic value or, as discussed above, out of environmental concerns for the wetlands and potential river flooding. Respectfully, this is not an option that the Town can consider under the New Hampshire Constitution.

A municipality cannot use aesthetic or other concerns to require a landowner to dedicate its property as open space. Trs. of Dartmouth Coll. v. Town of Hanover, 171 N.H. 497, 510 (2018). Doing so would effectively be a taking for public use and entitle the landowner to compensation from the municipality. Id. In other words, any decision that limits the development of the Property in favor of maintaining the Property as open space either would require the Town to compensate the Applicant or would be in violation of the New Hampshire Constitution.

As such, the decision of the ZBA is not to compare the Proposal of multi-family workforce housing to keeping the Property in its current undeveloped condition. The comparison must be between the impacts of a multi-family workforce housing development or other potential permitted uses, such as a large retail establishment, a hotel, or an office building. This comparison simplifies the ZBA's decision as many potential impacts become immaterial in this light – not because the issues do not matter, but because the issue will ultimately be unchanged by the ZBA's decision. Concerns about height of the building and potential for flooding are no different for a residential building than they would be for a commercial building. In fact, as discussed above, some of these concerns would be better under the Proposal than under the likely alternative, such as traffic.

The Applicant is confident that, compared to the alternative uses of the Property, the Proposal would be better for the Town of Warner. It provides the much needed affordable housing in a way that minimizes negative impacts on the Town. It satisfies all of the standards for the special exception and variance, as set forth in the Application. Warner needs additional housing more than it needs another retail plaza.