



TOWN OF WARNER

P.O. Box 265, 5 East Main St.
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
landuse@warnernh.gov

Application for Variance

The applicant hereby requests a Variance to the terms of:

Article: XIV-A Section: of the Warner Zoning Ordinance

Applicant/Contact Person:

Name of Applicant: Concord Area Trust for Community Housing ("CATCH") Date:

Mailing Address: 105 Loudon Road

Town: Concord State: NH Zip: 03301

Telephone: 603-223-0810 Alternate: Email: tfurtado@catchhousing.org

Owner of Property:

Name of Owner: Comet LLC Date:

Mailing Address: 84 Range Road

Town: Windham State: NH Zip: 03087

Telephone: Alternate: Email:

Location of Property:

Map#: 35 Lot#: 4-3 Zoning District: Commercial (C-1) District

Address: Route 103

Describe the request:

Approximately 34-unit workforce housing development. See attached.

Application for Variance

State in writing how the following conditions pertain to the property and be prepared to present the application at a public hearing. The burden of proof is on the applicant to show that all conditions have been met.

Warner Zoning Ordinance Article XVII and RSA 674:33

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

See attached.

2. Granting the variance will not be contrary to the spirit of the ordinance.

See attached.

3. By granting the variance substantial justice is done.

See attached.

4. By granting the variance the value of surrounding properties are not diminished.

See attached.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- 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; and
- ii. The proposed use is a reasonable one.

OR

b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

Authorization from Owner(s):

1. I (We) hereby designate Cleveland, Waters and Bass, P. A. to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [ZBA].

2. By submitting this application, I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the ZBA may at some point during the review process schedule a public site visit, which will be duly posted.

3. I (We) understand that the ZBA will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.

4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s):  Date: 5/21/25

Date: _____

Signature of Applicant(s)  Date: 5/24/25

if different from Owner: _____ Date: _____

Printed name of person(s) who signed above:

Michael Quinn
THOMAS R. FURRADO

For Zoning Board of Adjustment Use Only			
Assigned Case #:			
Date Received at Land Use Office:			
Received by:			
Fee Amount:	Cash:	Check #:	Other:
Abutter List Received: Yes:		No:	
Date of Review:	Date of Hearing:	Date Approved:	

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

**APPLICATION FOR SPECIAL EXCEPTION AND VARIANCE
STATEMENT OF FACTS AND LAW**

This Statement of Facts and Law is submitted on behalf of the Concord Area Trust for Community Housing (“CATCH”) with respect to its application for a special exception and variance (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”). All testimony, statements, representations, evidence, plans, reports, studies, and other information submitted or to be submitted by or on behalf of the Application in connection with the Application at or prior to the public hearing on the Application are incorporated by reference hereto. The applicant requests that the Zoning Board of Adjustment (“ZBA”) approve this Statement of Facts and Law as the specific findings required pursuant to RSA 676:3, I.

Preliminary Statement

The Applicant submitted an application on or about March 19, 2025 (the “Prior Application”) for a special exception and variance for a similar, albeit larger, proposal as discussed herein. At the time of this Application, the Prior Application is still pending. This Application is submitted without waiver of or prejudice to the Prior Application and the Applicants rights thereto. The Applicant intends to continue with the Prior Application and reserves all rights of appeal relating thereto.

Nevertheless, in the hearing on the Prior Application, there were concerns raised regarding the size of the proposal discussed therein. The size of that prior proposal is necessary to achieve the funding and expected income necessary to build and operate the prior proposal.

Nevertheless, in an attempt to accommodate the concerns regarding the size, the Applicant has prepared this Application which contemplates a smaller proposal. The Applicant has not confirmed that sufficient funding will be available for this smaller proposal, nor that this smaller proposal will be financially feasible. Accordingly, the Applicant reserves the right to withdraw this Application should it be determined that the smaller proposal is not feasible. However, the Applicant submits this Application now for the sake of timing, particularly because of the timing constraints for construction and the application timelines for federal funding.

Alternatively, if the Prior Application is granted, or granted in part,¹ this Application will become moot.

¹ For example, if the variance requested in the Prior Application is approved but the special exception is denied, then the variance requested herein will be moot and need not be considered again, and only the special exception herein would need to be considered.

Background and Description

The Property consists of a 13.8± acre, undeveloped lot on Route 103 in the Warner Intervale (INT) Overlay District, part of the Commercial (C-1) District. The surrounding lots are primarily commercial uses near Route 103's intersection with Interstate 89.

The Proposal involves an approximately 34-unit workforce housing development. The Proposal will be a single three-story building² with surface parking. The units will be a mixture of one, two, and three-bedroom units. Preliminary plans for the Proposal are submitted with the Application and incorporated by reference hereto.

The Proposal will constitute "workforce housing" within the meaning of RSA 674:58, *et seq.* and Article XIV-A of the Town of Warner Zoning Ordinance (the "Ordinance"). Multi-family workforce housing is permitted within the C-1 and INT Districts by special exception. See Ordinance, Table 1.

A housing development was previously submitted to the ZBA in 2022 by the Owner under a different proposed design that was mixed workforce housing and market-rate housing. On or about August 16, 2022, the ZBA granted a special exception for workforce housing. Subsequently, the Owner applied for site plan approval with the Town of Warner Planning Board. During that process, the Town and the Planning Board took the position that the Ordinance prohibited market-rate housing as part of a rental workforce housing development, and the Owner's site plan was withdrawn or abandoned. Pursuant to Article XVII, §F.2 of the Ordinance, the 2022 special exception lapsed.

This Proposal likewise seeks a Special Exception to allow workforce housing. Unlike in 2022, this Proposal is exclusively for workforce housing units – no market-rate housing units are contemplated.

Additionally, the Proposal requires a variance from the minimum front setback for the C-1 District set forth in Article XI, §C.1.b. of the Ordinance. Due to topographic and other physical conditions of the site, the Proposal places the building 20 feet from the front property line where the minimum front setback is 40-feet.

Article XI, §C.3 allows the Planning Board to reduce the front setback by up to 50% which would allow this Proposal without a variance. That authorization, however, is conditioned upon several criteria including, without limitation, on-site shared access arrangements with adjoining properties. The adjoining property, however, a Dunkin Donuts location, is ill-suited for shared access with a residential property and the properties are separated by a small brook. Likewise, the shape of the two lots (Route 103 is not a straight line in this location) and the configuration of the properties make such a connection impractical. Moreover, in initial discussions with the Planning Board about the Proposal, it appeared that the Planning Board similarly believed that direct access to Route 103 is preferable. Accordingly, a variance is required.

² The building will only be 3 stories from the front. In either case, it complies with the height limitations of the Ordinance.

Details of Request

The Applicant requests (1) a special exception to construct multi-family workforce housing on the Property and (2) a variance to allow construction of a building within 20 feet of the front boundary where 40 feet are required and shared access with an adjoining property is not reasonably feasible.

Special Exception (Multi-Family Workforce Housing)

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

Multi-family workforce housing is permitted by Special Exception in both the C-1 and INT Districts. See Ordinance, Table 1. See also Ordinance, Article XIV-A, §C.1

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

Workforce housing is an essential, desirable, and necessary use in Warner. The Warner Master Plan recognizes that there is a significant housing shortage in Warner and Merrimack County as a whole. "The lack of housing stock and rising prices make it difficult to find an affordable place to live, or even to afford and maintain ones existing housing." See Master Plan, 4-1. This Proposal will provide a meaningful supply of workforce housing that specifically addresses that problem.

In conversations with the Kearsarge Regional School District, for example, the superintendent indicated that it is difficult for the school district to hire teachers, as the teachers have difficulty find affordable housing on what the school district pays. Some teachers who were offered positions declined the positions specifically for this reason. Accordingly, without affordable housing in the area, the school district will likely be unable to hire teachers or will need to raise teacher pay and, in turn, raise taxes.

The Property is also an ideal location for such a Proposal. The Property is in a commercial area, close to public services and served by municipal water and sewer. Moreover, the proximity of Interstate 89 makes the Proposal convenient for commuters while avoiding any significant increase in traffic through Warner, such that might be created if housing were built farther from the highway. Likewise, statistics from the Institution of Transportation Engineers indicate that the traffic created by multi-family affordable housing developments of this size are significantly less than would be created by the sort of commercial development which would otherwise be built on this Property as of right without ZBA approval.³

The Proposal and the location of the Property further support the rural character of Warner. Warner needs affordable housing. By concentrating a large supply of affordable housing in this

³ More detailed analysis of the traffic implications would be performed in connection with the Planning Board's site plan review process and in obtaining permits from the State Department of Transportation.

area, the Proposal alleviates the pressure on other, more rural areas of Warner that might be less suited to an influx of dense, workforce housing.

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

The Proposal will not impair the integrity or character of the area. The Proposal is near residential areas where the use is similar but will be located within the Commercial District where the scale of the use will not be detrimental to the character of the neighborhood. Indeed, the higher-density residential use of the Proposal will be transitional between the commercial and rural areas. The proximity of shopping and Interstate 89 will keep the majority of traffic in the commercial area that can accommodate such traffic and out of the rural areas of Town, as discussed above.

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

Not Applicable.

Variance Standards (Setback)

- 1. Granting the variance would not be contrary to the public interest because:*

A variance is contrary to the public interest when it unduly, and in a marked degree, conflicts with the Zoning Ordinance such that it violates the Zoning Ordinance's basic zoning objectives. Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 105 (2007). There are two methods for determining whether a variance would violate a Zoning Ordinance's basic zoning objectives: (1) "whether granting the variance would alter the essential character of the neighborhood" or (2) "whether granting the variance would threaten the public health, safety or welfare". Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011).

The variance requested here would not alter the essential character of the neighborhood. As discussed above, the area is primarily commercial and consistent with a high-density workforce housing development. The Proposal will create a transitional use between the commercial and residential areas, and, due to the site's topography, compressing the building closer to the front property line will help obscure the view of the building from Route 103.

The variance will not threaten the public health, safety, or welfare in Warner. The majority of traffic will be concentrated in the commercial area and the nearly-direct access to Interstate 89, where such traffic will not create congestion or safety hazards. If anything, the provision of a significant supply of workforce housing will benefit Warner by making it easier for people to live and work in town and the surrounding area.

2. *If the variance were granted, the spirit of the ordinance would be observed because:*

The requirement that the variance not be “contrary to the public interest” is “related to the requirement that the variance be consistent with the spirit of the Zoning Ordinance.” Malachy Glen, 155 N.H. at 105. The general purposes of the Ordinance are “promoting the health, safety, and welfare of the inhabitants, and preserving the values and charm now attached to the town.” See Ordinance, Article I. Additionally, the C-1 District is intended to “encourage growth of this type in the proximity of the interstate highway interchanges. It is important to the economic success of Warner that the appearance of the town be perceived as an attractive commercial environment that reflects and compliments its heritage.” See Ordinance, Article XI. Similarly, the purpose of the INT Overlay District is “to provide a framework for development in this area as a commercial and social hub for the community.” See Ordinance, Article XI-A.

For the reasons discussed above, allowing the Proposal would observe the spirit of the Ordinance. The variance would allow for the Property to be used for its highest and best use, *i.e.*, as a multi-family residential development, creating workforce housing to alleviate the lack of housing in the area and make it easier for people to afford to live and work in Warner and the surrounding area.

In fact, many of the express purposes of the Ordinance are supported by the Proposal. The Proposal would “encourage growth in the proximity of the interstate highway interchanges” and improve the economic success and attractive commercial environment of Warner by creating workforce housing. Without workforce housing, the employees required by businesses necessary to that economic success and a commercial environment may not be able to afford to live nearby. On the other hand, allowing workforce housing brings more residents and potential customers to those businesses and makes it more likely that those individuals can afford to patronize businesses.

Moreover, a reduction in the setback is contemplated by the Ordinance in Article XI, §C.3. The Planning Board can reduce the setback by 50% if (a) parking is located in the rear of the building, (b) there is shared access between adjoining properties; and (c) the siting and orientation of the building is consistent with the scale and character of the Town of Warner, as determined by the planning board. In this case, the first criterion is satisfied. The third is expected to be satisfied through the site plan review process. The second is the only criterion that cannot be satisfied for the reasons discussed above – combining access between the residential development in the Proposal and the adjacent Dunkin Donuts drive-through is not practical or even preferable. In this case, however, given the location in the commercial zone and the proximity of the interstate highway, the traffic reducing benefits of shared access is unnecessary.

3. *Granting the variance would do substantial justice because:*

The “substantial justice” element of a variance is guided by two rules: that any loss to the individual that is not outweighed by a gain to the general is an injustice, and whether the proposed development is consistent with the area’s present use. Malachy Glen, 155 N.H. at 109.

Granting this variance would allow the beneficial addition of a significant number of workforce housing units within Warner that would benefit the current and future residents and the businesses that rely on employees and customers having affordable places to live in the area. Denying the variance, on the other hand, would be detrimental to the Applicant and the public. Given the size, shape, and particularly the wetlands on the Property, if the building were moved farther from the property line, it would significantly reduce the amount of parking available on the Property, likely making the entire project unfeasible. It would further exacerbate the housing shortage and force an increase of development into the rural areas of Warner where high-density affordable housing would be less well suited.

On the other hand, there is no benefit to the public in denying the Application that would offset those losses. The Ordinance recognizes that, in some circumstances, a 20-foot setback is reasonable in place of a 40-foot setback. The Proposal will be subject to site plan review by the Planning Board to ensure that issues such as parking layout and safe traffic patterns are appropriately addressed. The Proposal includes stormwater management systems with water treatment, and will be further subject to the alteration of terrain permit process with the State's Department of Environmental Services to ensure all wetlands and any endangered species are appropriately protected. The harm to the Applicant of strict enforcement of the Ordinance will outweigh any theoretical benefit to the public. Granting the variance will therefore result in substantial justice.

4. *If the variance were granted, the values of the surrounding properties would not be diminished because:*

The Proposal is consistent with the surrounding area and neighborhood. There is no reason that a multi-family residential development on this Property, located 20 feet from the front property line, would reduce the value of the nearby commercial properties. If anything, the availability of dense housing, bringing customers and employees to those businesses, will likely improve the value thereof.

5. *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 because:*

The wetlands and the general shape of the Property reduce the potential layouts available for the Proposal. In order to fit the building and sufficient parking on the Property, the front setback would need to be reduced. Given the location of the wetlands, moving the building outside of the front setback would significantly reduce the parking which would not be reasonable for a residential use. The only alternative would be to both significantly reduce the parking and the number of units together, but such a significant reduction in the scale of the Proposal would endanger its overall viability by losing economies of scale, and also significantly reduce the benefits that the Proposal would bring to the town and area by providing workforce housing.

None of the harms that a zoning ordinance is typically designed to prevent (noise, traffic, safety issues, incompatible uses in close proximity to each other, negative aesthetic impact) would be present in this case. As discussed above, the Planning Board, Department of Transportation, and Department of Environmental Services will specifically examine issues such as traffic and stormwater drainage, and wetland protection. The area is already a high traffic area and can handle the additional traffic of a residential use, most of which would be directed to the nearby Interstate 89 and not into rural Warner. As a commercial area, any noise created by a residential use would be immaterial. The building will be of modern, visually appealing design, so there will be no negative aesthetic impact. Certainly none of these factors will be impacted by a reduction in the front-setback from 40 feet to 20 feet, which would be immaterial to any noise or traffic of the Property, and actually will be improved from an aesthetic standpoint as compressing the building to the front property line will obscure the view of the building from Route 103.

In other words, none of the general public purposes of the Ordinance support denying this Application. As discussed above, the Proposal instead *further*s many of the Ordinance's stated purposes and provides much needed workforce housing in an area of Warner that is well-suited for it.

ii. *The proposed use is a reasonable one because:*

A landowner need not establish that a variance is "necessary for a property's use, only that the proposed use is reasonable given the particular conditions of the property. See Harborside Assocs., 162 N.H. at 519. "This factor, however, does *not* require the landowner to show that he or she has been deprived of *all* beneficial use of the land." Harrington v. Town of Warner, 152 N.H. 74, 80-81 (2005) (emphasis added). The question of whether the property can possibly be used differently from what the applicant has proposed is not a material consideration. Malachy Glen, 155 N.H. at 108.

The Proposal is reasonable. The Ordinance recognizes that multi-family workforce housing is appropriate in this area, subject to the conditions of a special exception which are all met in this case, as discussed above. Likewise, the Master Plan recognizes that workforce housing is not merely permissible and reasonable but sorely needed in Warner and in the region as a whole. The particular location of the Property allows the Proposal to serve as a transitional use from the commercial uses to the nearby residential area.

The requested variance specifically is likewise reasonable. The Ordinance expressly contemplates a reduction of the 40-foot front setback under certain conditions. In this case, one of those conditions (shared access with abutting lots) is not feasible, reasonable, or even desirable to connect a residential parking lot with the commercial parking lot of a Dunkin Donuts drive-through. Moreover, given the location of the Property, the traffic reducing intentions of shared access are simply not necessary, as discussed above.

The Applicant reserves the right to amend, modify, and/or supplement this application at or before the hearing thereon.



TOWN OF WARNER

P.O. Box 265, 5 East Main St.
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
landuse@warnernh.gov

Application for Special Exception

The applicant hereby requests a Special Exception to the terms of:

Article: XIV-A Section: _____ of the Warner Zoning Ordinance

Applicant/Contact Person:

Name of Applicant: Concord Area Trust for Community Housing ("CATCH") Date: _____

Mailing Address: 105 Loudon Road

Town: Concord State: NH Zip: 03301

Telephone: 603-223-0810 Alternate: _____ Email: tfurtado@catchhousing.org

Owner of Property:

Name of Owner: Comet LLC Date: _____

Mailing Address: 84 Range Road

Town: Windham State: NH Zip: 03087

Telephone: _____ Alternate: _____ Email: _____

Location of Property:

Map#: 35 Lot#: 4-3 Zoning District: Commercial (C-1) District

Address: Route 103

Describe the request:

Approximately 34-unit workforce housing development. See attached.

Application for Special Exception

State in writing how the following conditions pertain to the property and be prepared to present the application at a public hearing. The burden of proof is on the applicant to show that all conditions have been met.

Warner Zoning Ordinance Article XVII and RSA 674:33

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

See attached.

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

See attached.

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

See attached.

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

See attached.

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

Authorization from Owner(s):

1. I (We) hereby designate Cleveland, Waters and Bass, P.A. to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [ZBA].


2. By submitting this application, I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the ZBA may at some point during the review process schedule a public site visit, which will be duly posted.

3. I (We) understand that the ZBA will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.

4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s):  Date: 5/21/25

Date: _____

Signature of Applicant(s) if different from Owner:  Date: 5/21/25

Date: _____

Printed name of person(s) who signed above:

Michael Quinn
Thomas R. Furtado

For Zoning Board of Adjustment Use Only			
Assigned Case #:			
Date Received at Land Use Office:			
Received by:			
Fee Amount:	Cash:	Check #:	Other:
Abutter List Received: Yes:		No:	
Date of Review:	Date of Hearing:	Date Approved:	

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

**APPLICATION FOR SPECIAL EXCEPTION AND VARIANCE
STATEMENT OF FACTS AND LAW**

This Statement of Facts and Law is submitted on behalf of the Concord Area Trust for Community Housing (“CATCH”) with respect to its application for a special exception and variance (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”). All testimony, statements, representations, evidence, plans, reports, studies, and other information submitted or to be submitted by or on behalf of the Application in connection with the Application at or prior to the public hearing on the Application are incorporated by reference hereto. The applicant requests that the Zoning Board of Adjustment (“ZBA”) approve this Statement of Facts and Law as the specific findings required pursuant to RSA 676:3, I.

Preliminary Statement

The Applicant submitted an application on or about March 19, 2025 (the “Prior Application”) for a special exception and variance for a similar, albeit larger, proposal as discussed herein. At the time of this Application, the Prior Application is still pending. This Application is submitted without waiver of or prejudice to the Prior Application and the Applicants rights thereto. The Applicant intends to continue with the Prior Application and reserves all rights of appeal relating thereto.

Nevertheless, in the hearing on the Prior Application, there were concerns raised regarding the size of the proposal discussed therein. The size of that prior proposal is necessary to achieve the funding and expected income necessary to build and operate the prior proposal.

Nevertheless, in an attempt to accommodate the concerns regarding the size, the Applicant has prepared this Application which contemplates a smaller proposal. The Applicant has not confirmed that sufficient funding will be available for this smaller proposal, nor that this smaller proposal will be financially feasible. Accordingly, the Applicant reserves the right to withdraw this Application should it be determined that the smaller proposal is not feasible. However, the Applicant submits this Application now for the sake of timing, particularly because of the timing constraints for construction and the application timelines for federal funding.

Alternatively, if the Prior Application is granted, or granted in part,¹ this Application will become moot.

¹ For example, if the variance requested in the Prior Application is approved but the special exception is denied, then the variance requested herein will be moot and need not be considered again, and only the special exception herein would need to be considered.

Background and Description

The Property consists of a 13.8± acre, undeveloped lot on Route 103 in the Warner Intervale (INT) Overlay District, part of the Commercial (C-1) District. The surrounding lots are primarily commercial uses near Route 103's intersection with Interstate 89.

The Proposal involves an approximately 34-unit workforce housing development. The Proposal will be a single three-story building² with surface parking. The units will be a mixture of one, two, and three-bedroom units. Preliminary plans for the Proposal are submitted with the Application and incorporated by reference hereto.

The Proposal will constitute “workforce housing” within the meaning of RSA 674:58, *et seq.* and Article XIV-A of the Town of Warner Zoning Ordinance (the “Ordinance”). Multi-family workforce housing is permitted within the C-1 and INT Districts by special exception. See Ordinance, Table 1.

A housing development was previously submitted to the ZBA in 2022 by the Owner under a different proposed design that was mixed workforce housing and market-rate housing. On or about August 16, 2022, the ZBA granted a special exception for workforce housing. Subsequently, the Owner applied for site plan approval with the Town of Warner Planning Board. During that process, the Town and the Planning Board took the position that the Ordinance prohibited market-rate housing as part of a rental workforce housing development, and the Owner's site plan was withdrawn or abandoned. Pursuant to Article XVII, §F.2 of the Ordinance, the 2022 special exception lapsed.

This Proposal likewise seeks a Special Exception to allow workforce housing. Unlike in 2022, this Proposal is exclusively for workforce housing units – no market-rate housing units are contemplated.

Additionally, the Proposal requires a variance from the minimum front setback for the C-1 District set forth in Article XI, §C.1.b. of the Ordinance. Due to topographic and other physical conditions of the site, the Proposal places the building 20 feet from the front property line where the minimum front setback is 40-feet.

Article XI, §C.3 allows the Planning Board to reduce the front setback by up to 50% which would allow this Proposal without a variance. That authorization, however, is conditioned upon several criteria including, without limitation, on-site shared access arrangements with adjoining properties. The adjoining property, however, a Dunkin Donuts location, is ill-suited for shared access with a residential property and the properties are separated by a small brook. Likewise, the shape of the two lots (Route 103 is not a straight line in this location) and the configuration of the properties make such a connection impractical. Moreover, in initial discussions with the Planning Board about the Proposal, it appeared that the Planning Board similarly believed that direct access to Route 103 is preferable. Accordingly, a variance is required.

² The building will only be 3 stories from the front. In either case, it complies with the height limitations of the Ordinance.

Details of Request

The Applicant requests (1) a special exception to construct multi-family workforce housing on the Property and (2) a variance to allow construction of a building within 20 feet of the front boundary where 40 feet are required and shared access with an adjoining property is not reasonably feasible.

Special Exception (Multi-Family Workforce Housing)

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

Multi-family workforce housing is permitted by Special Exception in both the C-1 and INT Districts. See Ordinance, Table 1. See also Ordinance, Article XIV-A, §C.1

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

Workforce housing is an essential, desirable, and necessary use in Warner. The Warner Master Plan recognizes that there is a significant housing shortage in Warner and Merrimack County as a whole. “The lack of housing stock and rising prices make it difficult to find an affordable place to live, or even to afford and maintain ones existing housing.” See Master Plan, 4-1. This Proposal will provide a meaningful supply of workforce housing that specifically addresses that problem.

In conversations with the Kearsarge Regional School District, for example, the superintendent indicated that it is difficult for the school district to hire teachers, as the teachers have difficulty find affordable housing on what the school district pays. Some teachers who were offered positions declined the positions specifically for this reason. Accordingly, without affordable housing in the area, the school district will likely be unable to hire teachers or will need to raise teacher pay and, in turn, raise taxes.

The Property is also an ideal location for such a Proposal. The Property is in a commercial area, close to public services and served by municipal water and sewer. Moreover, the proximity of Interstate 89 makes the Proposal convenient for commuters while avoiding any significant increase in traffic through Warner, such that might be created if housing were built farther from the highway. Likewise, statistics from the Institution of Transportation Engineers indicate that the traffic created by multi-family affordable housing developments of this size are significantly less than would be created by the sort of commercial development which would otherwise be built on this Property as of right without ZBA approval.³

The Proposal and the location of the Property further support the rural character of Warner. Warner needs affordable housing. By concentrating a large supply of affordable housing in this

³ More detailed analysis of the traffic implications would be performed in connection with the Planning Board’s site plan review process and in obtaining permits from the State Department of Transportation.

area, the Proposal alleviates the pressure on other, more rural areas of Warner that might be less suited to an influx of dense, workforce housing.

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

The Proposal will not impair the integrity or character of the area. The Proposal is near residential areas where the use is similar but will be located within the Commercial District where the scale of the use will not be detrimental to the character of the neighborhood. Indeed, the higher-density residential use of the Proposal will be transitional between the commercial and rural areas. The proximity of shopping and Interstate 89 will keep the majority of traffic in the commercial area that can accommodate such traffic and out of the rural areas of Town, as discussed above.

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

Not Applicable.

Variance Standards (Setback)

1. *Granting the variance would not be contrary to the public interest because:*

A variance is contrary to the public interest when it unduly, and in a marked degree, conflicts with the Zoning Ordinance such that it violates the Zoning Ordinance's basic zoning objectives. Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 105 (2007). There are two methods for determining whether a variance would violate a Zoning Ordinance's basic zoning objectives: (1) "whether granting the variance would alter the essential character of the neighborhood" or (2) "whether granting the variance would threaten the public health, safety or welfare". Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011).

The variance requested here would not alter the essential character of the neighborhood. As discussed above, the area is primarily commercial and consistent with a high-density workforce housing development. The Proposal will create a transitional use between the commercial and residential areas, and, due to the site's topography, compressing the building closer to the front property line will help obscure the view of the building from Route 103.

The variance will not threaten the public health, safety, or welfare in Warner. The majority of traffic will be concentrated in the commercial area and the nearly-direct access to Interstate 89, where such traffic will not create congestion or safety hazards. If anything, the provision of a significant supply of workforce housing will benefit Warner by making it easier for people to live and work in town and the surrounding area.

2. *If the variance were granted, the spirit of the ordinance would be observed because:*

The requirement that the variance not be “contrary to the public interest” is “related to the requirement that the variance be consistent with the spirit of the Zoning Ordinance.” Malachy Glen, 155 N.H. at 105. The general purposes of the Ordinance are “promoting the health, safety, and welfare of the inhabitants, and preserving the values and charm now attached to the town.” See Ordinance, Article I. Additionally, the C-1 District is intended to “encourage growth of this type in the proximity of the interstate highway interchanges. It is important to the economic success of Warner that the appearance of the town be perceived as an attractive commercial environment that reflects and compliments its heritage.” See Ordinance, Article XI. Similarly, the purpose of the INT Overlay District is “to provide a framework for development in this area as a commercial and social hub for the community.” See Ordinance, Article XI-A.

For the reasons discussed above, allowing the Proposal would observe the spirit of the Ordinance. The variance would allow for the Property to be used for its highest and best use, *i.e.*, as a multi-family residential development, creating workforce housing to alleviate the lack of housing in the area and make it easier for people to afford to live and work in Warner and the surrounding area.

In fact, many of the express purposes of the Ordinance are supported by the Proposal. The Proposal would “encourage growth in the proximity of the interstate highway interchanges” and improve the economic success and attractive commercial environment of Warner by creating workforce housing. Without workforce housing, the employees required by businesses necessary to that economic success and a commercial environment may not be able to afford to live nearby. On the other hand, allowing workforce housing brings more residents and potential customers to those businesses and makes it more likely that those individuals can afford to patronize businesses.

Moreover, a reduction in the setback is contemplated by the Ordinance in Article XI, §C.3. The Planning Board can reduce the setback by 50% if (a) parking is located in the rear of the building, (b) there is shared access between adjoining properties; and (c) the siting and orientation of the building is consistent with the scale and character of the Town of Warner, as determined by the planning board. In this case, the first criterion is satisfied. The third is expected to be satisfied through the site plan review process. The second is the only criterion that cannot be satisfied for the reasons discussed above – combining access between the residential development in the Proposal and the adjacent Dunkin Donuts drive-through is not practical or even preferable. In this case, however, given the location in the commercial zone and the proximity of the interstate highway, the traffic reducing benefits of shared access is unnecessary.

3. *Granting the variance would do substantial justice because:*

The “substantial justice” element of a variance is guided by two rules: that any loss to the individual that is not outweighed by a gain to the general is an injustice, and whether the proposed development is consistent with the area’s present use. Malachy Glen, 155 N.H. at 109.

Granting this variance would allow the beneficial addition of a significant number of workforce housing units within Warner that would benefit the current and future residents and the businesses that rely on employees and customers having affordable places to live in the area. Denying the variance, on the other hand, would be detrimental to the Applicant and the public. Given the size, shape, and particularly the wetlands on the Property, if the building were moved farther from the property line, it would significantly reduce the amount of parking available on the Property, likely making the entire project unfeasible. It would further exacerbate the housing shortage and force an increase of development into the rural areas of Warner where high-density affordable housing would be less well suited.

On the other hand, there is no benefit to the public in denying the Application that would offset those losses. The Ordinance recognizes that, in some circumstances, a 20-foot setback is reasonable in place of a 40-foot setback. The Proposal will be subject to site plan review by the Planning Board to ensure that issues such as parking layout and safe traffic patterns are appropriately addressed. The Proposal includes stormwater management systems with water treatment, and will be further subject to the alteration of terrain permit process with the State's Department of Environmental Services to ensure all wetlands and any endangered species are appropriately protected. The harm to the Applicant of strict enforcement of the Ordinance will outweigh any theoretical benefit to the public. Granting the variance will therefore result in substantial justice.

4. *If the variance were granted, the values of the surrounding properties would not be diminished because:*

The Proposal is consistent with the surrounding area and neighborhood. There is no reason that a multi-family residential development on this Property, located 20 feet from the front property line, would reduce the value of the nearby commercial properties. If anything, the availability of dense housing, bringing customers and employees to those businesses, will likely improve the value thereof.

5. *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 because:*

The wetlands and the general shape of the Property reduce the potential layouts available for the Proposal. In order to fit the building and sufficient parking on the Property, the front setback would need to be reduced. Given the location of the wetlands, moving the building outside of the front setback would significantly reduce the parking which would not be reasonable for a residential use. The only alternative would be to both significantly reduce the parking and the number of units together, but such a significant reduction in the scale of the Proposal would endanger its overall viability by losing economies of scale, and also significantly reduce the benefits that the Proposal would bring to the town and area by providing workforce housing.

None of the harms that a zoning ordinance is typically designed to prevent (noise, traffic, safety issues, incompatible uses in close proximity to each other, negative aesthetic impact) would be present in this case. As discussed above, the Planning Board, Department of Transportation, and Department of Environmental Services will specifically examine issues such as traffic and stormwater drainage, and wetland protection. The area is already a high traffic area and can handle the additional traffic of a residential use, most of which would be directed to the nearby Interstate 89 and not into rural Warner. As a commercial area, any noise created by a residential use would be immaterial. The building will be of modern, visually appealing design, so there will be no negative aesthetic impact. Certainly none of these factors will be impacted by a reduction in the front-setback from 40 feet to 20 feet, which would be immaterial to any noise or traffic of the Property, and actually will be improved from an aesthetic standpoint as compressing the building to the front property line will obscure the view of the building from Route 103.

In other words, none of the general public purposes of the Ordinance support denying this Application. As discussed above, the Proposal instead *further*s many of the Ordinance's stated purposes and provides much needed workforce housing in an area of Warner that is well-suited for it.

ii. The proposed use is a reasonable one because:

A landowner need not establish that a variance is "necessary for a property's use, only that the proposed use is reasonable given the particular conditions of the property. See Harborside Assocs., 162 N.H. at 519. "This factor, however, does *not* require the landowner to show that he or she has been deprived of *all* beneficial use of the land." Harrington v. Town of Warner, 152 N.H. 74, 80-81 (2005) (emphasis added). The question of whether the property can possibly be used differently from what the applicant has proposed is not a material consideration. Malachy Glen, 155 N.H. at 108.

The Proposal is reasonable. The Ordinance recognizes that multi-family workforce housing is appropriate in this area, subject to the conditions of a special exception which are all met in this case, as discussed above. Likewise, the Master Plan recognizes that workforce housing is not merely permissible and reasonable but sorely needed in Warner and in the region as a whole. The particular location of the Property allows the Proposal to serve as a transitional use from the commercial uses to the nearby residential area.

The requested variance specifically is likewise reasonable. The Ordinance expressly contemplates a reduction of the 40-foot front setback under certain conditions. In this case, one of those conditions (shared access with abutting lots) is not feasible, reasonable, or even desirable to connect a residential parking lot with the commercial parking lot of a Dunkin Donuts drive-through. Moreover, given the location of the Property, the traffic reducing intentions of shared access are simply not necessary, as discussed above.

The Applicant reserves the right to amend, modify, and/or supplement this application at or before the hearing thereon.

MERRIMACK COUNTY RECORDS *Kathi L. Guay* CPO, Register

Mark Dunn

18.00
2.
25-

9,000-

WARRANTY DEED

MRT INVESTMENT & DEVELOPMENT, LLC, a New Hampshire limited liability company, in good standing, with a principal place of business of P.O. Box 7115, Milford, NH 03055, for consideration paid, grants to COMET LLC, a New Hampshire limited liability company, in good standing, with a principal place of business of 355 Middlesex Avenue, Suite 7, Wilmington, MA 01887, with

WARRANTY COVENANTS:

A certain tract or parcel of land, with buildings and improvements thereon, if any, situate on the southerly side of NH Route 103, a/k/a West Main Street, so-called, in the Town of Warner, County of Merrimack and State of New Hampshire, being Lots 1, 2 & 3 on a plan entitled "Subdivision Plan, Assessors Map 35, Lot 4, West Main Street/N.H. Route 103, Warner, New Hampshire", for R.A.W. Investments, Inc., drawn by T.F. Bernier, Inc., dated April, 2000, as revised, scale 1"=60 feet and recorded as Plan 16243 in the Merrimack County Registry of Deeds to which reference may be had for a more particular description and containing all lots as shown on said Plan.

Subject to a Conservation Easement in favor of the Town of Warner as described in Corrective Conservation Easement Deed of R.A.W. Investment Trust, Inc. to the Town of Warner dated July 2, 2003 and recorded at Book 2547, Page 1295 in the Merrimack County Registry of Deeds;

Subject to slope and embankment easements, drainage easements and damage release in favor of the State of New Hampshire for reconstruction and widening of NH Route 103/West Main Street dated May 12, 1966 and recorded at Book 984, Page 507 in said Registry;

-2-

Subject to covenants and restrictions in favor of Sun Oil Company as described in deed of Richard & Patricia Sandy to Sun Oil Company dated November 29, 1966 and recorded at Book 998, Page 496 in said Registry restricting Sandy, their successors and assigns from constructing and operating a gasoline station within 1,000 feet of the property described in the deed at Book 998, Page 496 as to the remaining land of said Sandy;

Subject to power transmission line easement in favor of The Contoocook Electric Light Company dated May 5, 2016 and recorded at Book 434, Page 528 in said Registry and as depicted on Plan 16243;

Subject to slope and embankment easements and damage release in favor of the State of New Hampshire dated June 8, 1966 and recorded at Book 986, Page 180 in said Registry for the construction of the I-89 highway corridor and the reconstruction of NH Route 103 as the same may affect the subject property;

Subject to a Boundary Line Agreement between High View Church Farm, Inc. and Dorothy Sawyer dated July 19, 1990 and recorded at Book 1842, Page 1517 in said Registry establishing the westerly boundary line of Tax Lot 35-3 and the easterly boundary line of Lot 35-4 as depicted on Plan 11670 and the easterly boundary line of Lot 3, Plan 16243 as depicted on said Plan 16243;

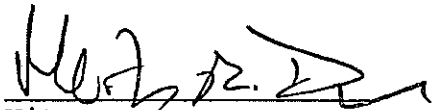
Subject to a 12 foot wide driveway easement in favor of Dorothy C. Sawyer, her heirs and assigns, dated July 19, 1990 and recorded at Book 1842, Page 1520 in said Registry for access to Tax Lot 35-3 as depicted on Plan 11670 and Plan 16243.

Meaning and intending to describe and convey the same premises as described in the Foreclosure Deed of R.A.W. Investments Trust, Inc. by MRT Investment & Development, LLC, as holder of power of sale mortgage, to MRT Investment & Development, LLC dated August 17, 2009 and recorded at Book 3150, Page 871 in the Merrimack County Registry of Deeds.

THIS IS RAW LAND AND NOT HOMESTEAD PROPERTY

Witness my hand this 1st day of December, 2017

MRT INVESTMENT & DEVELOPMENT, LLC


Witness

BY



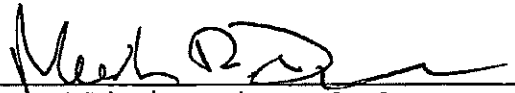
Annmarie Pintal Turcotte, Manager

Duly Authorized

-3-

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, SS.

On this the 1st day of December, 2017, before me, the undersigned officer, personally appeared Annmarie Pintal Turcotte, in her capacity as Manager of MRT Investment & Development, LLC, known to me (or satisfactorily proven) to be the person who executed and acknowledged the foregoing instrument for the purposes therein contained in her capacity as Manager of MRT Investment & Development, LLC.



Notary Public/Justice of the Peace
Printed Name: Mark R. Dunn, Esq.
My Commission Expires: 10/29/2019

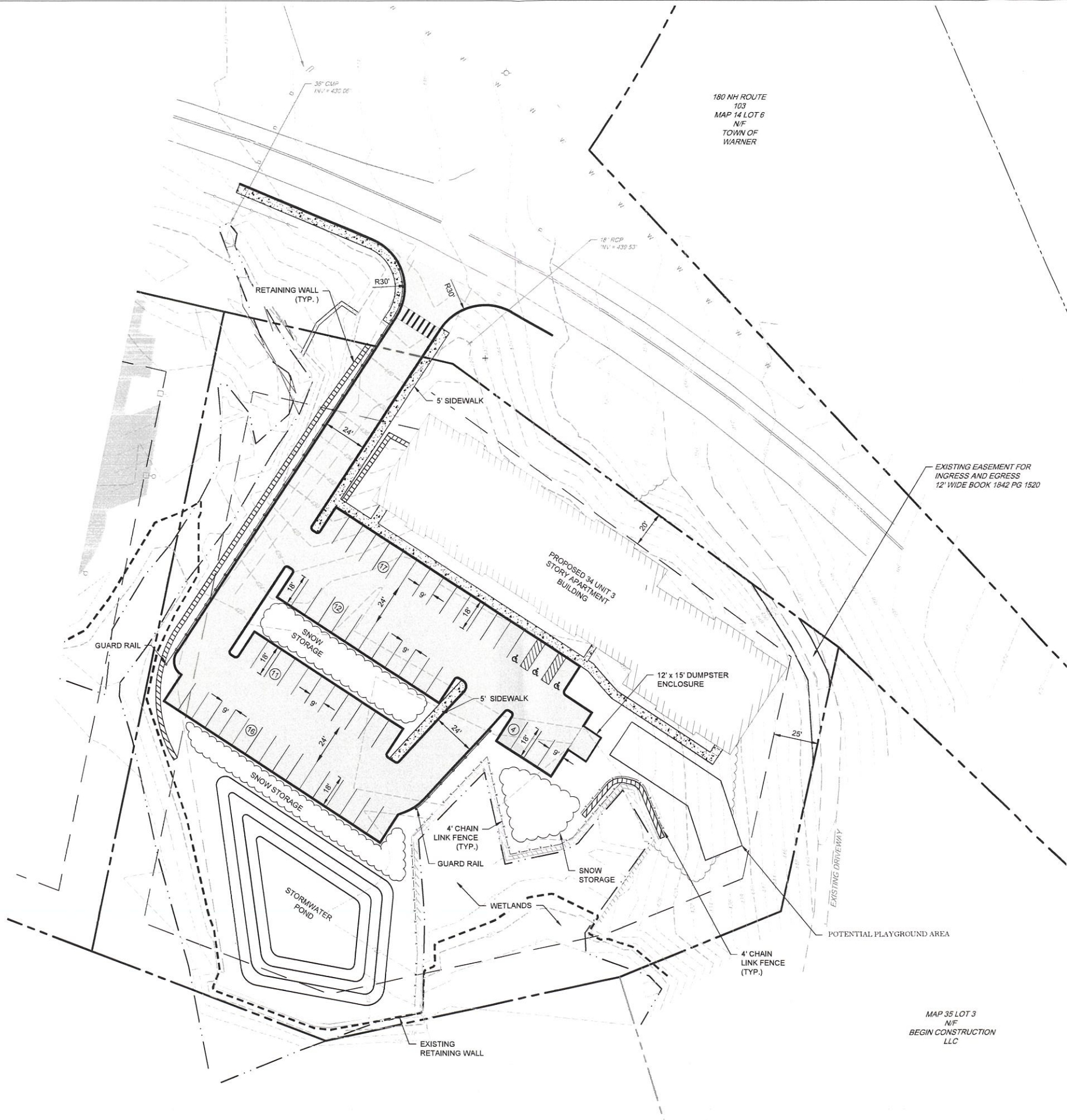
MICRO

LIST OF ABUTTERS/NOTIFICATION LIST
Warner, New Hampshire
Map/Lot 35-4-3

Owner	Street Address	Map/Block/Lot
Comet LLC 84 Range Road Windham, NH 03087	9 Route 103 West	35-4-3 35-4-1 35-4-2
Applicant	Street Address	Map/Block/Lot
Concord Area Trust for Community House (CATCH) 105 Loudon Road Concord, NH 03301	N/A	N/A
Applicant's Consultants	Street Address	Map/Block/Lot
Cleveland Waters and Bass, P.A. Two Capital Plaza, 5 th Floor Concord, NH 03301 Attn: Jeffrey C. Christensen, Esq.	N/A	N/A
Ranger Engineering Group, Inc. 130 Main Street, Suite 202 Salem, NH 03079	N/A	N/A
Abutters	Street Address	Map/Block/Lot
Town of Warner P.O. Box 265 Warner, NH 03278	180 West Main Street	14-6
Lindsay Britton Michael Yereniuk 143 West Main Street Warner, NH 03278	143 West Main Street	34-11-1
Warner Village Water District P.O. Box 252 Warner, NH 03278	Off Chemical Lane	34-26-3
White Clover LLC 257 Mansion Road Dunbarton, NH 03046	183 West Main Street	35-3
Evans Group Inc. P.O. Box 246 Lebanon, NH 03766	Route 103 West	35-5
VS Warner, LLC P.O. Box 1378 New London, NH 03257	North Road	14-13

C:\Users\Bj\Documents\Bj\2025\250514-06 LOT 3 WARNER NH\DESIGN\BIB\BIB_C31001.dwg PLOTTED: 02/05/2025 1:23 PM BY: Bjamingslow PLOTSTYLE: Ranger.ctb PROJECT STATUS: ---

LEGEND	
EXISTING	PROPOSED



PARKING CALCULATION:
PER SECTION XIX.B TABLE OF OFF-STREET PARKING REQUIREMENT OF THE SITE PLAN REVIEW REGULATIONS OF THE TOWN OF WARNER:

PARKING REQUIRED (MULTI UNIT HOUSING): LOT 3
2.5 SPACES PER UNIT = 85 SPACES REQUIRED FOR 34 UNITS

TOTAL REQUIRED = 85 SPACES
TOTAL PROVIDED = 80 SPACES = 1.75 SPACES PER UNIT

ZONING REQUIREMENTS: C1-COMMERCIAL DISTRICT INTERVALE OVERLAY DISTRICT		
	REQUIRED	PROVIDED LOT 3
MIN. LOT AREA	40,000 SF	113,256 SF
MIN. LOT FRONT.	200'	400'
FRONT SETBACK	40'	20'
SIDE SETBACK	25'	27'
MAX IMPERVIOUS AREA	70%	40.6%

- NOTES:**
THIS PLAN REQUIRES THE APPROVAL OF THE FOLLOWING WAIVERS
1. WAIVER FROM THE PLANNING BOARD FROM SECTION X.A OF THE SITE PLAN REVIEW REGULATIONS TO PERMIT 1.75 SPACES PER UNIT WHERE 2.5 ARE REQUIRED.
 2. VARIANCE FROM THE WARNER ZONING BOARD OF ADJUSTMENT TO REDUCE THE FRONT SETBACK FROM 40' TO 20' (50%) AS ALLOWED BY ZONING BYLAW ARTICLE XI.C.3
 3. A SPECIAL EXCEPTION FROM THE ZONING BOARD OF ADJUSTMENT IS REQUIRED TO ALLOW MULTI FAMILY APARTMENT UNITS IN THE INT DISTRICT.



DATE	NO.	REVISIONS	BY

PLAN OF LAND
LOT 3 - ROUTE 103 WEST, WARNER NH,
ASSESSOR'S MAP 35 LOTS 4-3

PROPERTY OWNER: COMET, LLC
84 RANGE ROAD, WINDHAM, NH 03087

LAYOUT AND MATERIALS PLAN
CS1001

RANGER ENGINEERING GROUP, INC.
130 Main Street, Suite 202
Salem, NH 03079
Tel: 978-208-1762
www.rangereng.com

