

**Questions and Comments on Concord Area Trust for Community Housing (CATCH)
Rehearing Request Case 2025-9
August 12, 2025**

On June 25, 2025 the Town of Warner NH Zoning Board of Adjustment issued a Notice of Decision on an Application for a Special Exception, **Case: 2025-5**, Applicant: Concord Area Trust for Community Housing (CATCH), Owner: Comet LLC, Address: Route 103, Parcel: Map:35, Lot: 4-3, District: C-1, Intervale, Details of Request: Application to construct a 34-unit multi-family workforce housing development in C-1, Intervale district, Article XIV-A and TABLE-1 Use Regulations RESIDENTIAL #6.

On or about July 24, 2025, CLEVELAND, WATERS AND BASS, P.A. filed a request for rehearing on behalf of its client Concord Area Trust for Community Housing regarding the June 25, 2025 Notice of Decision on the Application for a Special Exception, **Case: 2025-5**, Applicant: Concord Area Trust for Community Housing (CATCH), Owner: Comet LLC, Address: Route 103, Parcel: Map:35, Lot: 4-3, District: C-1, Intervale, Detail of Request: Application to construct a 34-unit multi-family workforce housing development in C-1, Intervale district, Article XIV-A and TABLE-1 Use Regulations RESIDENTIAL #6

The footnote of Page 1 of that request for rehearing refers to the fact that the applicant (CATCH) also submitted an application for variance which the applicant (CATCH) withdrew via an email dated 6/10/2025 from Jeffrey Christensen, attorney CLEVELAND, WATERS AND BASS, P.A. that was sent to the Land Use Secretary. This email stated that: In connection with the application submitted by CATCH on May 22, CATCH would like to withdraw the application for variance (but not the special exception). **Due to the smaller design, our engineer was able to fit it with the standard setback. Accordingly, we will be proceeding on the special exception only. I am attaching revised plans that remove the setback variance.** I will bring extra copies tomorrow for the Board if anyone needs them. **(Emphasis added)**

On June 11, 2025 the Town of Warner NH, Zoning Board of Adjustment issued a Notice of Decision regarding the Application for a Variance, **Case 2025-6**, Applicant: Concord Area Trust for Community Housing (CATCH), Owner: Comet LLC, Address: Route 103, Parcel: Map:35, Lot: 4-3, District: C-1, Intervale, Details of Request: Application to allow construction of a building 20 feet from the edge of a public right of way where 40 feet is required in the district. The Notice of Decision notifies the applicant that on June 11, 2025 the Zoning Board of Adjustment voted to DENY the variance to the terms of the Warner Zoning Ordinance without prejudice. The Summary indicated that the variance was denied without prejudice by a vote of 5-to-0 because the applicant withdrew the application.

The current request for rehearing clearly states on page 1 that the rehearing was requested on the June 25, 2025 Notice of Decision on the Application for a Special Exception, **Case: 2025-5**. In the Conclusion on page 17, paragraph 48. The applicant (CATCH) claims that the Board's decision in **Case 2025-5** applied erroneous legal standards and analyses and makes factual findings that are not reasonably supported by the evidence. By referring to both the hearings on the current application **Case 2025-5** and the Prior Application **Case 2025-1** the applicant (CATCH) is attempting to overturn the Board's decision in both the Case 2025-5 and Case 2025-1. **The applicant should have requested a rehearing on, or appealed the decision in Case 2025-1 during the time period allowed which it did not do. The findings of fact in the Board's denial in Case 2025-1 are different from the findings of fact in the Board's denial in Case 2025-5.**

The record of the hearings and the information presented in Case 2025-1 are different from the records of the hearings and the information presented in Case 2025-5. In **Case 2025-1** (“Prior application”) the applicant (CATCH) **previously sought** the Board’s approval for a Special Exception for a 48-unit workforce housing building. During that application process the applicant claimed that a 48-unit workforce housing building was the smallest size building that was economically viable but did not provide a written economic analysis documenting this claim. In **Case 2025-5, the current application**, the applicant (CATCH) is seeking the Board’s approval for a 34-unit workforce housing building with the claim that anything smaller than the proposed 34-unit workforce housing building is not economically viable again without a written economic analysis documenting this new claim.

The applicant (CATCH) also states on pages 5 and 6 of its request for rehearing that a 24-unit workforce housing building is not economically viable but yet again does not provide a written economic analysis in support of its claim. The Footnote 3 at the bottom of page 6 of this request for rehearing also refers to a previous application in 2022 granted for a 24-unit building, that would have contained a mixture of workforce housing and market rate housing units (**Case 2022-3 , Applicant Comet, LLC., Adam Quinn, Application for Special Exception, Warner, NH Zoning Board of Adjustment, Notice of Decision, Date of Decision August 16, 2022**). At least that applicant (Comet LLC, Adam Quinn) provided a written analysis of the economic viability in that application. The reference of page 6 of the current CATCH request for rehearing that refers to the economic viability for building a four unit housing building is irrelevant and prejudicial to the matter before the Board. Once again the current applicant provided only speculation without any written economic analysis documenting that claim.

On Page 17 in the Conclusion section CATCH states that the Board should have granted a special exception. **As stated above the applicant (CATCH) failed to request a rehearing on, or appeal the Town of Warner NH Zoning Board of Adjustment decision in Case 2025-1 during the time period allowed. The foregoing motion presented in item 48., of the Conclusion section does not specify which Case the applicant (CATCH) is referencing. Since page 1 of the CATCH application for rehearing refers to the Town of Warner Zoning Board of Adjustment’s decision of June 25, 2025 and thus the Zoning Board of Adjustment’s decision in Case 2025-5 need not reopen its decision in Case 2025-1.**

Regarding the applicant’s (CATCH) request that the Board schedule a rehearing on the variance application, if the applicant wanted to request a rehearing on the June 11, 2025 Town of Warner NH, Zoning Board of Adjustment Notice of Decision on the Application for a Variance, Case 2025-6, then it should have filed a separate request for a rehearing on that case and not included a request for a hearing on Case 2025-6 as part of a request for rehearing on Case 2025-5. Simply including a reference in a footnote to the withdrawal of the application for a variance request is not adequate. **The Decision on Case 2025-5 was for a request for a Special Exception. The Decision in Case 2025-6 was for a request for a Variance.** The Town of Warner Zoning Ordinance Article XVII, D. Granting of Variances lists the terms under which the Board may grant a Variance for a particular use, a parcel of land, an existing building or a proposed building pursuant to RSA 674:33, as may be amended. The Town of Warner Zoning Ordinance Article XVII, E, Granting of Special Exceptions lists the terms under which the Board shall hear and decide requests for a Special Exceptions.

The terms under which the Board may grant a Variance and the terms under which the Board may grant a Special Exception are markedly different.

The Board should require that the applicant file a separate request for rehearing on the June 11, 2025 Notice of Decision issued by the Town of Warner NH, Zoning Board regarding the Application for a Variance, Case 2025-6.

Discussion on Town of Warner Zoning Ordinance Article XVII. Section E.1.

Discussion on Section E.1. b. - Is the use essential or desirable to the public convenience or welfare?

The Use requested, Multi-Family Workforce Housing is identified in Table 1 Use Regulations, RESIDENTIAL, item 6. of the Town of Warner Zoning Ordinance as a Use that requires a Special exception in both the C-1 and the INT (Interval) districts.

This does not prohibit the Town of Warner, NH Zoning Board of Adjustment from making a finding that the requested Use at a specific property within the District is not essential or desirable to the public convenience or welfare. While the Board may not pick and choose which permitted Uses it may allow on a property it can limit the size of the proposed building in order to protect public convenience and welfare. The size of the proposed building creates numerous adverse impacts on public safety, traffic, air quality and surface water quality since the property in question is located between a protected wetland which abuts the Warner River and State Route 103. The Warner Interval District encompasses that portion of Warner's commercial district to the east of and in immediate proximity to Exit 9, between the Interstate and the intersection of State Route 103 and North Road. While it is important to recognize that the Intervale area is a major junction and a stopping point for travelers and shoppers, it is also important to recognize that they bring a high volume of traffic to this area and that development in the Intervale District must be capable of safely handling the traffic.

As discussed above in these comments and acknowledged on page 2. paragraph 2. of the Applicant's request for rehearing, the applicant (CATCH) reduced the size of the building **Case 2025-5, the current application**, the applicant (CATCH) is seeking the Board's approval for a 34-unit workforce housing building with the claim that anything smaller than the proposed 34-unit workforce housing building is not economically without a written economic analysis documenting this claim.

The applicant (CATCH) also states on pages 5 and 6 of its request for rehearing that a 24-unit workforce housing building is not economically viable but yet again does not provide a written economic analysis in support of its claim. The Footnote 3 at the bottom of page 6 of this request for rehearing refers to a previous application in 2022 that was granted for a 24-unit building, that would have contained a mixture of workforce housing and market rate housing units. At least that applicant provided a written analysis of the economic viability in that application. The reference of page 6 of the current request for rehearing that refers to the economic viability for building a four unit housing building is irrelevant and prejudicial to the matter before the board. Once again the applicant provided only speculation without any written economic analysis documenting that claim. **The requested Use is not desirable to the public convenience or welfare due to the numerous adverse impacts on public safety, traffic, air quality and surface water quality created by the size of the building.**

Discussion on Section E.1. c. - Will the requested use impair the integrity or character of the district or adjoining districts or be detrimental to the health, morals or welfare?

The Use requested "Multi-Family Workforce Housing" is **not permitted by right** in either the C-1 or the Intervale district. **The Town of Warner, NH, Zoning Ordinances, Table I Use Regulations, RESIDENTIAL, Item 6., Multi-Family Workforce Housing lists the letter S in the table to indicate that a Special Exception is required.** The Town of Warner, NH, Zoning Ordinance, Article XVII, Board of Adjustment, E. Granting of Special Exceptions contains the requirements under which the Board shall require a Special Exception only when it finds each of the following criteria contained in subparagraphs a., b., c., and d. are met. Paragraph 2. states that the Zoning Board of Adjustment may attach appropriate conditions to assure that the general criteria can be met and enforced, including but not limited to the items specified in subparagraphs a. through h.

The Board of Adjustment may attach appropriate conditions to ensure that the general criteria can be met and enforced. For example, the **Zoning Board of Adjustment** can require modifications of the external features of the building or structures, and limit the lot coverage or building height and dimensions. The **Zoning Board of Adjustment** may require professional studies or the funding thereof on the impact of the Use on municipal services, traffic, public safety, noise, air quality and ground and surface water quality. **The Zoning Board of Adjustment can require that these studies are site specific to this site and adjoining area. It need not rely on generic data or average data generated for other sites in New Hampshire or other regional or national average data.**

The size, building dimensions, and the amount of lot coverage are not immaterial to the decisions as to whether or not the building will impair the character of the district or adjoining districts or whether or not the building will be detrimental to the health, morals or welfare.

The adjoining district to the site will be negatively impacted by the proposed Use. The question for the Zoning Board of Adjustment is how bad will that impact be? **The Zoning Board of Adjustment should require professional site specific studies on the negative impacts of the proposed Use on traffic, public safety, noise, air quality and ground and surface water quality.** (Application for a Special Exception, Applicant: Concord Area Trust for Community Housing (CATCH), Owner: Comet LLC, Address: Route 103, Parcel: Map:35, Lot: 4-3, District: C-1, Intervale, Details of Request: Application to construct a 34-unit multi-family workforce housing development in C-1, Intervale district, Article XIV-A and TABLE-1 Use Regulations RESIDENTIAL #6).

Both the Board and the applicant need to refocus on the proposed Use which is listed in Table 1 Use Regulations RESIDENTIAL 6. Multi-Family Workforce Housing [Amended March 2021] of the Town of Warner, NH Zoning Ordinance and furthered regulated in

Article IV General Provisions paragraphs:

K., Multi-Family Development, L. Residential Structures Per Lot,

Article XI Commercial District - C1

Article XI-A Warner Intervale Overlay District - INT

Article XIV Workforce Housing and

Article XVII Board of Adjustment

Unfortunately the Town of Warner Zoning Ordinance does not define the following terms:
“Essential”, “Desirable”, “integrity or character of the district or adjoining districts”

References to definitions may help but even state law contains different definitions of the same term. Even the same term may be defined differently depending on the dictionary that is chosen.

References to the information contained in the **approved** Town of Warner Master plan may help guide the Board in its decision making may help guide the Board in its decision making process but are not legally enforceable. References to a **draft** Master Plan are definitely not legally enforceable.

Finally, I strongly recommend that the Town of Warner, NH have this request for rehearing (Case 2025-9) be reviewed by Town counsel before making any further decisions regarding (Case 2025-9) or its previous decisions in Case 2025-5 Application for Special Exception (June 25, 2025) and Case 2025-6 Application for Variance (June 11, 2025)

Respectfully submitted,
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