

Received Nov 30
via email.

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Via email

November 30, 2016

Paul Gorman, Chair
New London Planning Board
375 Main Street
New London, NH 03257

Re: Request to Planning Board for Release of Written Town Counsel Advice
and Other Written Materials

Dear Paul:

At today's meeting of the Accessory Dwelling Units (ADU) Subcommittee of the Planning Board, the subcommittee referred to:

- (i) A recent letter or memorandum from Town Counsel addressing issues relating to the proposal to amend the New London Zoning Ordinance provisions governing accessory dwelling units (the "ADU Advice").
- (ii) A perception that Zoning Ordinance provisions relating to workforce housing fail to comply with the requirements of New Hampshire law.

The subcommittee indicated at today's meeting that it could not release the ADU Advice, but that such release could be authorized by the Planning Board.

I respectfully request that the Planning Board release the ADU Advice to the public, and ask that a copy be provided to me. As you know, I have been diligent (perhaps dogged) in my engagement with the subcommittee as it has developed a proposal on ADUs. I urged the subcommittee to seek the advice of Town Counsel at the first subcommittee meeting I attended, on September 13, and in a letter to the subcommittee on September 26, and at times in the other five subcommittee meetings I have attended.

Release of the ADU Advice could be helpful in reaching a consensus on the proposal.

I also seeking to understand the basis for the subcommittee's assertion that the workforce housing provisions of the Zoning Ordinance fail to comply with New Hampshire law. If there is any written advice from Town Counsel, or written material

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from Town staff or other internal or external sources, that explains or relates to this issue or suggests changes to the workforce housing provisions of the Zoning Ordinance, I respectfully request to receive copies of those materials.

Copies of the requested materials by email or any other convenient means would be satisfactory to me.

Thank you for entertaining this request and for your hard work on the Planning Board.

Sincerely,

/s/ Steven C. Root
Steven C. Root

cc: Jeremy Bonin, Chair, ADU Subcommittee
Lucy St. John, Planning & Zoning Administrator

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Workforce Housing

Section 674:58

674:58 Definitions. – In this subdivision:

I. "Affordable" means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family housing" for the purpose of workforce housing developments, means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic. If the ordinances and regulations of a municipality make feasible the development of sufficient workforce housing to satisfy the municipality's obligation under RSA 674:59, and such development is not unduly inhibited by natural features, the municipality shall not be in violation of its obligation under RSA 674:59 by virtue of economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

Source. 2008, 299:2, eff. Jan. 1, 2010.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Workforce Housing

Section 674:59

674:59 Workforce Housing Opportunities. –

I. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing. In order to provide such opportunities, lot size and overall density requirements for workforce housing shall be reasonable. A municipality that adopts land use ordinances and regulations shall allow workforce housing to be located in a majority, but not necessarily all, of the land area that is zoned to permit residential uses within the municipality. Such a municipality shall have the discretion to determine what land areas are appropriate to meet this obligation. This obligation may be satisfied by the adoption of inclusionary zoning as defined in RSA 674:21, IV(a). This paragraph shall not be construed to require a municipality to allow for the development of multifamily housing in a majority of its land zoned to permit residential uses.

II. A municipality shall not fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.

III. A municipality's existing housing stock shall be taken into consideration in determining its compliance with this section. If a municipality's existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with this subdivision and RSA 672:1, III-e.

IV. Paragraph I shall not be construed to require municipalities to allow workforce housing that does not meet reasonable standards or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

Source. 2008, 299:2, eff. Jan. 1, 2010.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Workforce Housing

Section 674:60

674:60 Procedure. –

I. Any person who applies to a land use board for approval of a development that is intended to qualify as workforce housing under this subdivision shall file a written statement of such intent as part of the application. The failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61, but shall not preclude an appeal under other applicable laws. In any appeal where the applicant has failed to file the statement required by this paragraph, the applicant shall not be entitled to a judgment on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

II. If a land use board approves an application to develop workforce housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4, I(c)(1). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

III. Upon receiving notice of conditions and restrictions under paragraph II, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the board, which shall not be less than 30 days.

(a) Upon receipt of such evidence from the applicant, the board shall allow the applicant to review the evidence at the board's next meeting for which 10 days' notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the board may also receive and consider evidence from other sources.

(b) The board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.

(c) Subject to subparagraph (d), the board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the board, in which case it may issue its final decision any time after the expiration of the period.

(d) If an applicant notifies the board in writing at any time that the applicant accepts the conditions and restrictions of approval, the board may issue its final decision without further action under this paragraph.

IV. A municipality may require that an applicant record restrictive covenants acceptable to the land use board that the workforce housing may not be rented to or sold to any household whose income is greater than that specified in RSA 674:58, IV. The covenant shall be for the term specified in the regulations of the land use board. The municipality may adopt regulations to insure compliance with the covenants, which regulations may include requirements for the monitoring of the project by the municipality or by a suitable third party agency qualified to carry out such requirements, including but not limited to requiring the production of annual income

verification for renters and non-owner occupiers. The land use board may consider the existence of recorded covenants or income qualification and occupancy criteria as satisfying the purpose of this paragraph if such covenants or criteria are administered by a state or federal entity.

Source. 2008, 299:2. 2010, 150:1, eff. June 14, 2010.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Workforce Housing

Section 674:61

674:61 Appeals. –

I. Any person who has filed the written notice required by RSA 674:60, and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the superior court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval otherwise violate such requirements.

II. A hearing on the merits of the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause. If the court determines that it will be unable to meet this requirement, at the request of either party it shall promptly appoint a referee to hear the appeal within 6 months. Referees shall be impartial, and shall be chosen on the basis of qualifications and experience in planning and zoning law.

III. In the event the decision of the court or referee grants the petitioner a judgment that allows construction of the proposed development or otherwise orders that the proposed development may proceed despite its nonconformance with local regulations, conditions, or restrictions, the court or referee shall direct the parties to negotiate in good faith over assurances that the project will be maintained for the long term as workforce housing. The court or referee shall retain jurisdiction and upon motion of either party affirming that negotiations are deadlocked, the court or referee shall hold a further hearing on the appropriate term and form of use restrictions to be applied to the project.

Source. 2008, 299:2, eff. Jan. 1, 2010.

**ARTICLE XXVI
WORKFORCE HOUSING OVERLAY DISTRICT**

- A. Purpose: The purpose of this Article is to provide reasonable opportunities for the development of Workforce Housing within New London for both home ownership and rental opportunities. The Town recognizes the importance and benefit to the community and its citizens in the establishment of suitable opportunities for Workforce Housing. The Town recognizes that there are some situations in which normal Zoning, Site Plan Review and/or Subdivision requirements may be waived without sacrificing public health, safety and welfare so long as proper safeguards are maintained. Accordingly, it has been deemed advisable to adopt Workforce Housing in accordance with 674:58-61.

This Article was established in order to meet the goals related to Workforce Housing section of the Housing Chapter in the New London Master Plan. Additionally, in implementing this article New London has considered the region's Affordable housing needs as defined in the Upper Valley Lake Sunapee Regional Planning Commission Housing Needs Assessment dated January 1, 2006.

- B. Authority: This Workforce Housing Article is adopted under the authority of RSA 674:58-61 and RSA 674:21.
- C. Applicability: This article applies to Workforce Housing developments proposed under RSA 674:58-61.
- D. Conditional Use Permit Requirement: Development of a Workforce Housing project in accordance with the provisions of this article is permitted through a Conditional Use Permit administered by the Planning Board.
- E. Permitted Zone Districts: Development of a Workforce Housing project in accordance with the provisions of this article is permitted through a Conditional Use Permit for the following uses within a Workforce Overlay District that encompasses all or part of the following zone districts in this Zoning Ordinance:

Permitted Types of Residential Uses by Zone District				
Zone District	Single Family Dwelling	Manufactured Home	Two-Family Dwelling	Multi-Family Housing
Urban Residential (R-1)	X	X	X	X
Residential (R-2)	X	X	X	
Agricultural & Rural Residential	X	X	X	
Commercial				X

- F. Overlay District Boundaries: The boundaries of this overlay district are shown on the map entitled Workforce Housing Overlay District dated March 10, 2009.
- G. Incentives for Workforce Housing: After considering all cost factors including, but not limited to, land, subdivision improvements for roads, utilities & drainage, marketing, insurance, labor, building materials, and profit to identify a total gross cost of the project and per unit gross costs, the Planning Board may approve one or more of the following incentives only if the applicant demonstrates the Town's land use ordinances and regulations induce a cost prohibitive project.
- a. Density Increase: The Planning Board may approve a density increase.
 - b. Lot Size Reductions: The Planning Board may allow a decrease of the minimum lot size.
 - c. Road Frontage Reductions: The Planning Board may allow a decrease in road frontage.
 - d. Setback Reductions: The Planning Board may set minimum setbacks on each lot. Perimeter setbacks shall be sufficient to buffer and protect adjacent properties and the street from encroachment. At a

minimum there shall be a fifty (50) foot setback from the property line around the perimeter of the property.

- e. Open Space Reduction: The Planning Board may approve a reduction in open space. Open space shall be sufficient to accommodate the needs of the proposed occupants of the project.
 - f. Waiver of Application Fees: Planning Board application fees for Site Plan Review, Subdivision, and Conditional Use Permit applications may be waived except the direct cost of notice to abutters, the applicant and any easement holders during the planning process and the fees for any independent consultants.
- H. Assurance of Continued Affordability:
1. The housing initially constructed and offered for sale or rent shall meet the definition of Workforce Housing as defined in ARTICLE III Definitions of the Zoning Ordinance.
 2. In order to qualify as Workforce Housing under this Article, the developer shall make a binding commitment that the Workforce Housing units will remain Affordable for a period of 30 years. The developer shall ensure this by securing a third party Administrator approved by the Planning Board and paid for by the developer to administer, monitor and enforce this binding commitment as provided in Section O. Acceptable third parties include a local, state or federal housing authority or other non-profit housing trust or agency. For the 30-year term, this binding obligation must make the following commitments for continued affordability:
 - a. Affordable housing rental units shall limit annual rent increases to the percentage increase in the Merrimack County median income.
 - b. Resale of Owner-Occupied Housing shall be to a family that qualifies for a Workforce Housing unit that is Affordable.
 3. Deed restrictions, restrictive covenants, or contractual arrangements related to Dwelling Units established under this Article must be documented on all plans filed with the New London Planning Board and the Registry of Deeds and in all deeds to individual units.
- I. Documentation of Eligibility for Workforce Housing: To ensure that only eligible households purchase/rent the designated Workforce Housing, the purchaser/renter of a Workforce Housing unit must submit copies of their last three years' federal income tax returns and written certification verifying their annual household income level does not exceed the maximum level as established by the applicable definitions in ARTICLE III of the terms used in this Article. Prior to the transfer of title, the tax returns and written certification of household income must be submitted to the Administrator and the developer of the housing units, or the developer's agent. The Administrator shall determine whether the purchaser/renter qualifies for Workforce Housing.
- J. Conditional Use Permit Application: A complete application for a Conditional Use Permit includes the materials listed below *in addition to an application for a Site Plan Review and/or a Subdivision*. An application for a Conditional Use Permit can be processed concurrently with the application for a Site Plan Review and/or a Subdivision, as required for the specific project.
1. An application form.
 2. The applicant shall file a written statement indicating the applicant's intent to develop land that is intended to qualify as Workforce Housing under RSA 674:58-61.
 3. List and mailing address of the abutters, the applicant and any easement holders on the property in question.

4. Fees for notifying abutters, the applicant and any easement holders.
 5. An application under this article must include, but is not limited to the following data to ensure project affordability:
 - a. Calculation of the number of units provided under this Article and how it relates to its provisions.
 - b. A project cost estimate including, but not limited to all costs for land; costs for constructing subdivision improvements including roads, utilities and drainage; financing; profit; sales & marketing; insurance; labor; building materials; and other cost factors. A gross total project cost and gross cost per housing unit shall be identified.
 - c. Description of each unit's size, type, estimated cost and other relevant data.
 - d. Documentation of household eligibility as required in Section J.6 of this Article.
 - e. All agreements established as part of Section H Assurance of Continued Affordability of this Article.
 - f. List of required variances, Conditional Use Permits, and special exceptions including justification of their necessity and effectiveness in contributing to affordability.
 - g. Cost savings associated with any written waiver request to the application submittal requirements or the standards outlined in the Site Plan Review Regulations or the Subdivision Regulations.
 6. Written requests for waivers from any of the application submittal requirements or standards outlined in the Site Plan Review Regulations or the Subdivision Regulations.
- K. Conditional Use Permit Criteria: The applicant needs to demonstrate to the Planning Board that the application for Workforce Housing meets the following criteria:
1. The Planning Board must determine that the type and density of proposed Workforce Housing units is compatible with or provides a compatible transition to the use and density of any neighboring residential areas and that the project will be designed in a manner that is harmonious with neighboring developments, natural surroundings, and housing context (the housing type, density and land use in the surrounding area).

Workforce Housing projects with Multi-Family Housing shall:

 - a. Have a landscaped buffer one hundred (100) feet in width around the perimeter of the project;
 - b. Have direct access to a paved street; and
 - c. Be served by public water and sewer service.
 2. The housing proposed shall qualify as Workforce Housing as defined in ARTICLE III Definitions.
 3. The project shall comply with all Zoning Ordinance, Site Plan Review Regulations and/or Subdivision Regulations, other than those standards relaxed under section F or section L. 3. (b).
 4. In determining the minimum lot size in areas served by on-site water and sewer systems, the minimum lot size shall comply with the New Hampshire Department of Environmental Services minimum lot sizing based on soil type and slope.

L. Conditional Use Permit Procedure:

1. Any person who applies to the Planning Board for approval of a development that is intended to qualify as Workforce Housing under this subdivision shall file a written statement of such intent as part of the application. See Section J.2. The failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61, but shall not preclude an appeal under other applicable laws. In any appeal where the applicant has failed to file the statement required by this paragraph, the applicant shall not be entitled to a judgment on appeal that allows construction of the proposed development, or otherwise permits the proposed Workforce Housing development to proceed despite its nonconformance with the Town's ordinances or regulations.
2. If the Planning Board approves an application to develop Workforce Housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The Planning Board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4, I(c)(1). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.
3. Upon receiving notice of conditions and restrictions under paragraph 2 and in the event the applicant objects to any conditions and restrictions, they shall, submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the Planning Board, which shall not be less than 30 days.
 - (a) Upon receipt of such evidence from the applicant, the Planning Board shall allow the applicant to review the evidence at the Planning Board's next regular business meeting for which ten days of public notice can be provided. Ten (10) days notice by certified mail shall be given to abutters, the applicant and the holders of any easements on the subject property. The general public shall be given ten (10) days notice by posting the public notice in two public places. At such meeting, the Planning Board may also receive and consider evidence from other sources.
 - (b) The Planning Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting. The Planning Board is authorized to consider relaxing or waiving one or more of the standards in the Town's land use ordinances and regulations to make the housing units in the project Affordable as provided in Paragraph G, Incentives for Workforce Housing.
 - (c) Subject to subparagraph (d), the Planning Board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the Planning Board, in which case it may issue its final decision any time after the expiration of the period.
 - (d) If an applicant notifies the Planning Board in writing at any time that the applicant accepts the conditions and restrictions of approval, the Planning Board may issue its final decision without further action under this paragraph.

M. Appeals Procedure (as specified in RSA 674:58-61, as amended):

1. Any person who has filed the written notice required by RSA 674:60, and whose application to develop Workforce Housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed Workforce Housing development may

appeal the Town's action to the superior court under RSA 677:15 seeking permission to develop the proposed Workforce Housing. The petition to the court shall set forth how the denial is due to the Town's failure to comply with the Workforce Housing requirements of RSA 674:59 or how the conditions or restrictions of approval otherwise violate such requirements.

2. A hearing on the merits of the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause. If the court determines that it will be unable to meet this requirement, at the request of either party it shall promptly appoint a referee to hear the appeal within 6 months. Referees shall be impartial, and shall be chosen on the basis of qualifications and experience in planning and zoning law.
3. In the event the decision of the court or referee grants the petitioner a judgment that allows construction of the proposed development or otherwise orders that the proposed development may proceed despite its nonconformance with local regulations, conditions, or restrictions, the court or referee shall direct the parties to negotiate in good faith over assurances that the project will be maintained for the long term as Workforce Housing. The court or referee shall retain jurisdiction and upon motion of either party affirming that negotiations are deadlocked, the court or referee shall hold a further hearing on the appropriate term and form of use restrictions to be applied to the project.

N. Limitation on Improvements: Repairs, remodeling, additions, expansions, restorations, reconstructions, Alterations, and the addition of Accessory Buildings are allowed provided:

1. The Workforce Housing unit continues to be Affordable. The resale price of units shall consider cost recovery for basic necessary capital improvements such as for the heating system, the water system, the sewer or septic system and the roof. The depreciated cost for any of these capital improvements shall be added onto the future value of the Affordable unit which is based on the latest median household income data for Merrimack County based on family size. For Workforce Housing rental apartment buildings, a portion of the rents shall be allocated to a capital improvement fund for basic necessary capital improvements identified above. The details of these capital programs will be spelled out in the regulations implementing the terms of this ordinance as provided in Section O.6, below; and
2. The improvements comply with the required setbacks.

O. Administration, Professional Reviews, Compliance and Monitoring

II. Applications for a Conditional Use Permit under this Article shall be made to the Planning Board and shall be part of the submission of an application and notice for Site Plan Review and/or Subdivision approvals as needed.

II. The Planning Board may require the developer to pay the cost of a professional review of various parts or of the whole of the proposed Workforce Housing project upon such terms and conditions as the Planning Board deems to be appropriate. By way of example, the Planning Board may request professional reviews by a civil engineer, attorney, financial analyst, environmental consultant, soil scientist, wetland scientist, wildlife biologist, etc. The Planning Board shall select the professional(s). For each professional review required by the Planning Board on a particular application, the Planning Board shall determine an amount to be placed in an escrow account with the Town for the estimated cost of the scope of services to be provided by the consultant chosen by the Planning Board. The developer must deposit this amount with the Town to establish this escrow account before the consultant will begin his/her review for the Planning Board and before the application will proceed in the review process.

V. Workforce Housing projects approved under this Article shall be administered, monitored and enforced by the Administrator as provided in Section H. above.

4. No certificate of occupancy shall be issued for a Workforce Housing unit without written

confirmation from the Administrator of the:

- a. Income eligibility of the tenant or buyer of the Affordable housing unit; and
 - b. Confirmation of the rent or price of the Affordable housing unit as documented by an executed lease or purchase and sale agreement by the Administrator.
5. The Administrator shall be responsible for the ongoing responsibility of monitoring compliance with resale and rental restrictions on Affordable units.
 6. The owner of a project containing Affordable units for rent shall prepare an annual report, due at the end of December each year certifying that the gross rents of Affordable units and the household income of tenants of Affordable units have been maintained in accordance this Article. Such reports shall be submitted to the Administrator. The annual report shall list the contract rent and occupant household incomes of all Affordable housing units for the calendar year.
 7. The Planning Board has authority to adopt regulations implementing the terms of this ordinance.
- P. Effective Date:
1. This ARTICLE XXVI of the New London Zoning Ordinance will become effective on July 1, 2009 unless the required effective date of RSA 674:58-61 is postponed by the New Hampshire Legislature as provided in Section P. 2 of this Article.
 2. If the New Hampshire Legislature enacts legislation postponing the required effective date of RSA 674:58-61, then this ARTICLE XXVI of the New London Zoning Ordinance shall not become effective until the required effective date provided in such legislative amendment.