

James M. Callahan  
20 Depot Street, Suite 220  
Peterborough, NH 03458  
Direct telephone: (603) 845-1959  
Email: jcallahan@atkinscallahan.com

June 13, 2019

Town of New London  
Attn: Nicole Gage, Zoning Administrator  
375 Main Street  
New London, New Hampshire 03257

*Via e-mail only*

**Re: Application – Variance from Article XXVI, Section E  
166 County Road / Tax Map 059, Lots 14 & 18**

Dear Ms. Gage:

Reference is made to my letter to you of June 13, 2019, and the Variance Application that was enclosed therewith. In my letter and the Application I reference Tax Map 059 Lots 13, 14 & 18 as being the property subject to the variance request. Please be advised that I only intended to reference Lots 14 & 18 and not Lot 13. It would be my client's intention to merge these two lots once the project is approved. Would you kindly inform the Board of Adjustment of this error?

Thank you again for all of your help. Please let me know if you need anything further.

Very truly yours,



James M. Callahan

cc: Continuum Health Services, Inc. (Team)  
Michael Black  
Jones & Beach, Inc.

James M. Callahan  
20 Depot Street, Suite 220  
Peterborough, NH 03458  
Direct telephone: (603) 845-1959  
Email: jcallahan@atkinscallahan.com

June 11, 2019

Town of New London  
Attn: Nicole Gage, Zoning Administrator  
375 Main Street  
New London, New Hampshire 03257

**Re: Application – Variance from Article XXVI, Section E  
166 County Road / Tax Map 059, Lots 13, 14 & 18**

Dear Ms. Gage:

Enclosed for filing with the New London Zoning Board of Adjustment and submitted on behalf of my client, Continuum Health Services, Inc., please find (or take note of) the following materials:

**Variance**

1. A copy of an Authorization letter allowing Continuum Health Services, Inc., to present its application to the Board
2. Application and Additional Fee(s): \$150 (Application); \$56 (newspaper notice fee); \$61.15 (12 abutter notices, including \$17.15 to send a registered letter to the Owner in England)
3. Supplemental Information – Six (6) questions found on page 3 of the “Town of New London ZBA Instructions to Applicants Appealing to the ZBA”
4. Supplemental Variance Application
5. List of Abutters and Abutter mailing labels
6. Plan showing property and surrounding area

I understand that this application will be scheduled for the July 2, 2019, Zoning Board of Adjustment meeting.

Thank you again for all of your help. Please let me know if you need anything further.

Very truly yours,



James M. Callahan

cc: Continuum Health Services, Inc. (Team)  
Michael Black  
Jones & Beach, Inc.



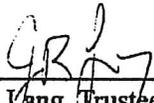
**Letter of Authorization**

Town of New London, New Hampshire  
Zoning Board of Adjustment

RE: Tax Map 59, Lots 5-3, 5-4, and 5-5

To Whom It May Concern:

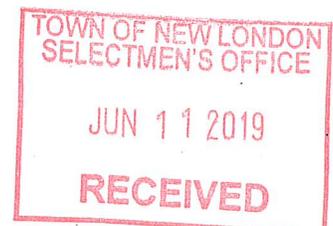
Trust of the Dorothea G. Bowley Rev. Trust, optionee of the above-referenced property, hereby authorize James Callahan, Attorney for Continuum Development, 250 Goddard Road, Lewiston, Maine 04240 and/ or Mike Black, agent for Continuum Development, 250 Goddard Road, Lewiston, Maine 04240 to attend Zoning Board of Adjustment and Planning Board Meetings, to act on my behalf concerning the previously mentioned property. The parcel is located on 166 County Road & Newport Road in New London, NH.

  
\_\_\_\_\_  
Jon R. Lang, Trustee  
Dorothea G. Bowley Rev. Trust

4/24/18  
Date

  
\_\_\_\_\_  
Dorna L. Bowley, Trustee  
Dorothea G. Bowley Rev. Trust

April 24, 2018  
Date



**Town of New London – Zoning Board of Adjustment**

Variance Application – Article II, Section 5

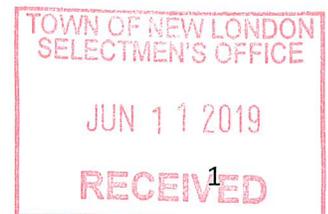
Special Exception – Article XXVI, Section E.

Continuum Health Services, Inc. (“Continuum”)

Map 059, Lots ~~13~~, 14 & 18 – 166 County Road & Newport Road (the “Property”)

This statement is intended to supplement Continuum’s Variance Application in connection with its proposed development of the Property into Workforce Housing (the “Project”).

1. **WHO owns the property? If the applicant is not the owner, this must be explained.**  
The Dorothea G. Bewley Revocable Trust - 1997 (the “Trust”), owns the Property. Continuum has the Property under contract for purchase from the Trust, subject to the condition that it obtain all governmental approvals to build and operate the Project.
2. **WHERE is the property located?** The Property is located off County Road. Attached is a portion of the New London Tax Map that shows the Property.
3. **DESCRIBE the property. Provide area, frontage, side and rear lines, slopes and natural features, etc. Plans must include pertinent measurements relative to your request, i.e., measurements from property lines, wetlands, driveways, etc.** The part of the Property upon which the Project would be constructed consists of 4.5 acres +/- . Continuum will have a Conceptual Site Plan prepared by Jones & Beach Engineers available for the public hearing on this application.
4. **WHAT do you propose to do?** Continuum intends to construct a 40 unit Workforce Housing multi-family rental complex consisting of eight (8) 5-unit buildings.
5. **WHY does your proposed use require an appeal to the Zoning Board of Adjustment?** Multi-family housing is not allowed in the R-2 district under the Workforce Housing Overlay District provisions of the New London Zoning Ordinance (the “Ordinance”).
6. **WHY should the appeal(s) be granted?** Because there is no fair and substantial relationship between the general public purposes of the exclusion of multi-family properties in the R-2 zone under the Workforce Housing Overlay District provisions of the Ordinance as applied to the Property. The Property is an ideal location for the Project given its proximity to several of the Town’s largest employers and the availability of municipal water and sewer.



# APPLICATION FOR A VARIANCE

To: Zoning Board of Adjustment, Town of New London, 375 Main Street

Name of owner/applicant: Continuum Health Services, Inc. c/o Atkins Callahan, PLLC

Mailing Address: 20 Depot Street, Suite 220, Peterborough State: NH Zip: 03458

Home Telephone: 603-845-1959 Work Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_

Email address: jcallahan@atkinscallahan.com

Owner of property: Dorthea G. Bewley Revocable Trust - 1997 u/d/t dated November 20, 1997  
(if same as applicant, write "same")

Location of property 166 Country Road & Newport Road

Tax Map Number: 059 Lot Number: 13, 14 & 18 Zone: R2

A variance is requested from the provisions of Article: XXVI Section: E  
of the Zoning Ordinance to permit Multi family workforce housing in the R2 Zone

*See 6/13/19  
letter.  
Variance  
request is  
only for  
lots 14 & 18.*

Facts supporting this request:

1. The variance will not be contrary to the public interest:

Please see attached

2. The spirit of the ordinance is observed:

Please see attached

3. Substantial justice is done:

Please see attached

4. The values of surrounding properties are not diminished; and:

Please 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:
- (1) 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;

\_\_\_\_\_  
Please see attached  
\_\_\_\_\_

and

- (2) The proposed use is a reasonable one;

\_\_\_\_\_  
Please see attached  
\_\_\_\_\_

- 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.

\_\_\_\_\_  
Please see attached  
\_\_\_\_\_

Continuum Health Services, Inc

Owner/applicant(s) Signature: By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Black, duly authorized

**NOTE:**

This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

For questions or assistance in completing these forms, please contact:

Zoning Administrator

603-526-1246

Email: [zoning@nl-nh.com](mailto:zoning@nl-nh.com)

Or

Assessing Coordinator

603-526-1243

Email: [landuse@nl-nh.com](mailto:landuse@nl-nh.com)



- 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:
- (1) 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;

\_\_\_\_\_  
Please see attached  
\_\_\_\_\_

and

- (2) The proposed use is a reasonable one;

\_\_\_\_\_  
Please see attached  
\_\_\_\_\_

- 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.

\_\_\_\_\_  
Please see attached  
\_\_\_\_\_

Continuum Health Services, Inc

Owner/applicant(s) Signature: By: Michael Black Date: 6/19/19  
Michael Black, duly authorized

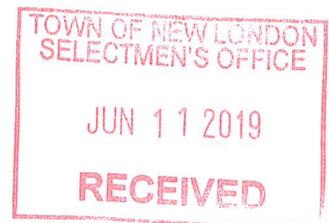
**NOTE:**

This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

For questions or assistance in completing these forms, please contact:  
Zoning Administrator  
603-526-1246  
Email: [zoning@nl-nh.com](mailto:zoning@nl-nh.com)

Or

Assessing Coordinator  
603-526-1243  
Email: [landuse@nl-nh.com](mailto:landuse@nl-nh.com)



**SUPPLEMENTAL SUBMITTAL  
TO  
THE NEW LONDON ZONING BOARD OF ADJUSTMENT**

CASE NO. \_\_\_\_\_

**CONTINUUM HEALTH SERVICES, INC.**

REQUEST FOR A VARIANCE  
166 COUNTY ROAD & NEWPORT ROAD  
PARCEL ID NUMBER Map 059, Lots 13, 14 & 18  
(the "**Property**")

*see 6/13/19  
letter.  
variance request  
is only for  
lots 14 & 18.*

**INTRODUCTION.** Continuum Health Services, Inc. (the "**Applicant**") is seeking a variance from the restriction outlined in Article XXVI, Section E of the New London, NH Zoning Ordinance (the "**Ordinance**") that does not permit multi-family workforce housing in the Residential (R-2) Zoning District. The Applicant is proposing to construct and operate a 40 unit Workforce Housing residential project (the "**Project**").

The Applicant is working with the New London Hospital to develop housing to serve the New London senior community to be known as New London Place. As part of the long process of designing and developing New London Place, the Applicant came to the realization that there could be staffing challenges for this facility due to the lack of affordable housing opportunities for its employees. The Applicant has looked for land appropriate for the development of workforce housing in New London but has been unable to find any suitable available land for sale.

The Property has many positive features that would be ideal for the development of workforce housing, including, but not limited to, its proximity to the commercial center of town (it's within walking distance to New London Place, New London Hospital and the Shopping Center) as well as the availability of municipal water and sewer. Not having to install septic systems and private wells eases infrastructure expense thus keeping the development truly "affordable."

About ten years ago, the New Hampshire Legislature recognized that the State had been, "experiencing a shortage of housing, ..., affordable to working households," which "present(s) a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses." [N.H. Laws 2008, 229:2]. Subsequently, the Legislature enacted RSA 674:58 *et seq.*, regarding Workforce Housing. These statutes provide that every municipality that exercises land use authority must 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 must be reasonable and the municipality must allow workforce housing to be located in the majority, but not necessarily all of the land area that is zoned to permit residential uses.

The Applicant wishes to distinguish “workforce housing” from “subsidized housing.” The Project is intended to provide housing to health care workers, first responders, teachers, and skilled tradespeople, to name a few. At a preliminary Planning Board hearing regarding the Project held on May 28, 2019, Colby-Sawyer College President, Susan Stuebner and New London Hospital Executive Director, Bruce King spoke in favor of the Project, echoing the Applicant’s sentiment that workforce housing is desperately needed in New London.

New Hampshire law provides that an applicant must meet a five-point test in order to be granted a variance. The facts support the Applicant’s request, as outlined below:

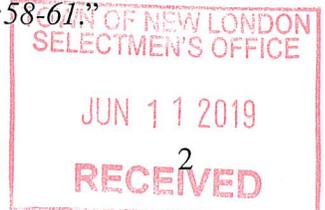
- 1. Granting the variance will not be contrary to the public interest.** The proposed use will not necessitate public expenditure for transportation, water, sewer, or life safety. The New London Master Plan adopted in 2011 recognized and acknowledged the need for affordable and workforce housing in New London. In fact, the Master Plan contains a recommendation that provides:

*“The Town should consider amending the Zoning Ordinance to respond to Senate Bill 342 on Workforce Housing by:*

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

The Town amended its Ordinance effective July 1, 2009, creating a Workforce Housing Overlay District and outlining a development process pursuant to a conditional use permit. The Property is entirely located within the Workforce Housing Overlay District.

- 2. If the variance were granted, the spirit of the ordinance would be observed.** The purpose of Article XXVI (WORKFORCE HOUSING OVERLAY DISTRICT) of the Ordinance, as outlined in Section A. thereof, 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.”*



In the case of *Harborside Associates v. Parade Residence Hotel*, 162 N.H. 508 (2011), the New Hampshire Supreme Court stated that one way to ascertain whether granting a variance would violate an ordinance's basic zoning objectives would be to examine whether granting the variance would alter the essential character of the neighborhood. The Property abuts a 147 unit multi-family development as well as a commercial development. It also abuts the R-1 zone in which multi-family housing is allowed in the Workforce Housing Overlay District. Sandwiched between a large mature development and a commercial use, close to County Road, the Project would not alter the essential character of the neighborhood.

The Project is ideally located for workforce housing which has been identified as a critical need in the community. As noted, the availability of municipal water and sewer facilitates affordability.

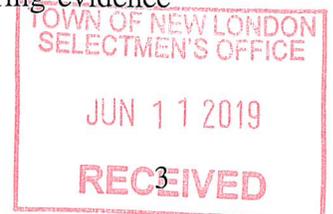
**3. Granting the variance would do substantial justice.** The concept of substantial justice is nebulous:

"It is not possible to set up rules that can measure or determine justice. Each case must be individually determined by board members. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications. A Board of Adjustment cannot alleviate an injustice by granting an illegal variance." *The Board of Adjustment in New Hampshire* (2005).

In this case, there is no public benefit that would outweigh the hardship to the Applicant and the community. In the June 7-20, 2019, issue of the *New Hampshire Business Review*, the headline to a feature known as 'Upper Valley Roundtable' read, "*In the Upper Valley, housing is THE challenge.*" This article stated, in part, that [regarding the top challenges to the vitality of the local economy], "*At the top of the list, ..., is the availability of affordable and workforce housing. In fact, the issue is seen as being at the root of other challenges that the area's employers and communities are facing.*"

Granting this variance will do substantial justice in that skilled labor currently unable to live where they work will be able to avail themselves of affordable housing. Having these workers live in New London will contribute to the vitality of the community and will help employers retain and attract skilled employees necessary for the continued provision of services to town residents.

**4. If the variance were granted, the values of surrounding properties would not be diminished.** The Applicant has consulted with real estate professionals and valuation experts and will provide at public hearing evidence



that the value of surrounding properties will not be diminished if the variance is granted.

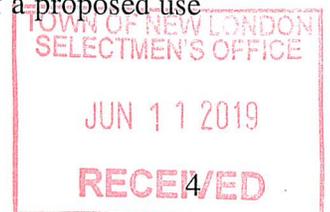
## 5. Unnecessary Hardship

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

**i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Property.** The purpose of the Ordinance is to provide reasonable opportunities for the development of Workforce Housing within New London for both home ownership and rental opportunities. Article XXVI E. Permitted Zone Districts of the Ordinance however does not provide for Multi-Family Housing in the R-2 Zone. There is no stated purpose outlined in the Ordinance explaining why Multi-Family Housing is not allowed on properties located in the R-2 Zone that are also within the Workforce Housing Overlay District. Arguably, exclusion of multi-family rental opportunities given the correlation of construction costs to rents charged would never allow for affordable workforce rental housing. This Property is unique in the sense that it has municipal water and sewer as well as close, walkable, proximity to several of the Town's major employers. And, as noted, there are no similar properties available for development in New London.

**ii. The proposed use is a reasonable one.** Providing affordable housing for skilled labor is very reasonable, especially in light of the lack of affordable housing in the region. A shortage of skilled labor in New London, the Upper Valley, and New Hampshire, a problem exacerbated by a lack of affordable housing, has been well reported. The Board should consider the following questions: (1) who will provide health care services? (2) police the Town's streets? (3) teach the Town's children? (4) respond to emergencies? Allowing these professionals to live where they work is incredibly reasonable and will insure that New London continues to remain a vital and robust community.

**B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the 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.** I believe that there is a split among practitioners as to this so-called "special conditions" test. A narrow reading of this criteria would be that if some/any use could be made of a property, then no variance is warranted. This type of narrow reading of this standard would mean that variances would virtually never be granted. A broad reading of this criteria would be that if a proposed use



is reasonable in any fashion, then a variance is warranted. This type of broad reading could eviscerate the purposes of zoning.

I'd like to suggest that the Board of Adjustment has the authority to support a variance application that lies somewhere in the center of these poles. The Property does have special conditions vis-à-vis the availability of municipal water and sewer, close proximity to the Town's major employers, and the fact that there is no similar property in Town available for the development of Workforce Rental Housing. While an applicant could develop single family and two-family rental housing on the Property under Workforce Housing Overlay District regulations, as a practical matter, this sort of development would not make the housing affordable. Accordingly, the Property cannot be used in strict conformance with the Ordinance.

**CONCLUSION.** In light of the foregoing, the Applicant respectfully requests that its application for a variance be granted.

