# TOWN OF WARNER – PLANNING BOARD
## Meeting Minutes
## January 4, 2016 7:00 PM
## Warner Town Hall, Lower Level

**Members Present: Chairman Rick Davies, Don Hall, Barbara Annis, Ken Milender, Ben Frost, Alternates Ben Inman, Peter Anderson, James Gaffney**
**Late Arrivals: Clyde Carson Selectmens Representative (arrived at 7:05)**
**Members Absent: Aedan Sherman**
**Land Use Secretary: Lois Lord**

### 1. OPEN MEETING
Chairman Davies opened the meeting at 7:00 p.m.

### 2. ROLL CALL
Roll call was taken with one member absent, and nine present. Rick Davies asked James Gaffney to sit in for Aedan Sherman.

### 3. APPROVAL OF MEETING MINUTES
Chairman Davies brought forth the meeting minutes of 12/7/15 for the Planning Boards approval. Barbara Annis had a question on the content which the Planning Board discussed and decided no change needed to be made. Rick Davies had found a correction regarding attendees. A **MOTION** to approve the minutes as amended was made by Barbara Annis, seconded by Ben Frost. A voice vote was taken with a unanimous yes.

The meeting minutes of 12/21/15 were reviewed by the Planning Board for approval. Chairman Davies noted two items for correction: one regarding the attendees and the second to add the title Compliance Officer in a paragraph where Peter Wyman was mentioned. A **MOTION** to approve the minutes with the two changes was made by Barbara Annis, seconded by Ken Millender. A voice vote was taken with a unanimous yes.

Rick made a **MOTION** that the three members of the Sign Ordinance Subcommittee, James Gaffney, Ben Frost and himself, vote to approve the Subcommittees meeting minutes of 12/15/15. A voice vote was taken with a unanimous yes.

Chairman Davies announced that the next item on the agenda was the Public Hearing on the Proposed Warrant Article. At this point Barbara Annis made a **MOTION** to go on to item 5 on the agenda and then go back to item 4 as the Public Hearing could be a lengthy discussion. Ben Frost seconded the motion. A roll call vote was taken with the results of **7-0-0.**

### 5. DETERMINATION OF SITE PLAN REVIEW
**Applicant**: Karen Remick

**Property Location:** 25 East Main Street, Map 30, Lot 001, Zoning District B-1

**Description:** Retail selling of painted furniture, antiques, occasional painting of furniture using nontoxic milk paint

Chairman Davies stated the next item would be a Determination of a Site Plan Review and the history on this was a discussion with the applicant in the Land Use Office when the word "stripping" was used. Rick said that the retail stores in the Velvet Moose building don't usually require the applicant come in to meet with the Planning Board but in this case he thought it did. Chairman Davies said they wanted to make sure there would be nothing that the Fire Department would have trouble with.

He noted that the property owners, the Herztogs were in the public audience as was the applicant, Karen Remick. Chairman Davies asked Ms. Remick to summarize her plans for the business. Ms. Remick said she plans on having a retail store for refinished furniture, she has a workshop at home and doesn't plan on doing much, if any refinishing at the business. She said she may occasionally paint a piece of furniture there but there will not be any stripping or use of any caustic materials. Rick noted there was mention on her

APPROVED

application of a non-toxic product to which Ms. Remick replied she had brought some information on the milk paint she uses which she handed out to the Planning Board members. She said it's one of the oldest forms of paint and contains milk protein, limestone clay and natural pigments and contains no VOCs.
Chairman Davies asked the property owners, Stephanie and David Hertzog if there had been other uses in the building that involved painting. Mr. Hertzog replied that Kids Galore did some painting with water based paints and that there is a provision in their standard lease for each retail space that nothing hazardous or flammable can be disposed of, kept or stored there. Rick asked if the layout of the space was going to be changed and Mr. Hertzog said no.

Rick Davies summarized the original file for the building when it went through Site Plan Review in 2006 and stated the way it was looked at by the Planning Board at that time was as retail space on that front part of the building. He asked if any of the board members had any questions. Clyde Carson asked what was in the space prior to this and Mr. Hertzog said it was previously Kids Galore. Don Hall noted that for the record, a number of years ago there was a furniture stripping/refinishing business in this building.

Chairman Davies referred to a noted phone conversation that Lois Lord had with Fire Chief Raymond regarding this use and that he had no concerns with it. Rick said he was looking for a **MOTION** that Site Plan Review is not required for this business at 25 East Main Street. Clyde Carson moved the motion and Ken Millender seconded it. A roll call vote was taken with the results of **7-0-0**.

## 4. PUBLIC HEARING ON PROPOSED WARRANT ARTICLE

The Public Hearing for proposed Warrant Article for amendment to Zoning Article XII Sign Regulations was brought forth, and it was noted that it had been advertised in the Concord Monitor, the town website and the town posting locations. Chairman Davies asked the Land Use Secretary if anything had been received from the public by way of email or mail to comment on this item and she replied nothing had been received. Rick then opened the public comment.

**Public Hearing opened at 7:14 –** No public was in attendance.

Chairman Davies asked if any of the Planning Board had anything to weigh in on. Clyde Carson stated he had read through the ordinance, does not have any comments on the ordinance but asked if they anticipate another change next year based on further developments with the Supreme Court. James Gaffney said the ordinance defers to the state regarding anything controlled by the state so amending it again is contingent upon the state changing RSAs.

Ben Frost said that as far as he knows there are no bills that will be introduced in this legislative session dealing with signage so he doesn't foresee any changes to state law. Ben continued it's always possible that Supreme Court law could come up with another decision that reinterprets this but if there were it would probably backtrack bit from Gilbert vs Arizona in which case our ordinance would still be okay.

Rick noted the last paragraph of the proposed amendment which basically says if we are in trouble in one area we can substitute it so we are covered with respect to the speech issue. He also stated that the permanent sign regulation really doesn't change that much.

Barbara Annis asked Clyde Carson, as Selectmen if he had a problem with 14. PROHIBITED SIGNS TYPES item a in the amendment which reads: Signs which flash, have motion, are animated, create an illusion of movement, or are internally illuminated, except for a Temporary Sign with a permit from the Board of Selectmen. ~~See Temporary Signs at the end of this Article for exceptions.~~ Chairman Davies clarified by saying temporary signs don't have any provisions for flashing, motion, eternally illuminated lights i.e. a message board and what they did at the subcommittee level and at the meeting level was to throw that back at the Board of Selectmen to be in charge of.

Clyde noted we are talking primarily about the sign that goes out across from the Town Hall. Barbara Annis asked if this warrant article goes through in March, will the Select board be ready with an application if someone comes in for a temporary sign. Chairman Davies stated they already have an application that he worked with Mary Whalen on last year; it might have to be tweaked. Clyde said he could probably count the instances on one hand where something other than town meetings are advertised on that sign and they ask

APPROVED

folks to come into talk to the Board of Selectmen about it. He said he couldn't speak for the entire Board of Selectmen but he doesn't see a major issue.

**Chairman Davies closed the public hearing at 7:20:47** and opened the meeting to Planning Board discussion. He asked if the board wanted to send the draft proposed revision to Article VII Sign Regulations dated December 22, 2015 to the voters to be voted on in March at the Town Meeting. Ben Frost so moved**,** Barbara Annis seconded it and Chairman Davies clarified the **MOTION** is to send this December 22, 2015 version of the draft proposed revision to Article VII Sign Regulations to voters at Town Meeting on March 9, 2016.

Don Hall asked if this could be brought up at Town Meeting for discussion and Rick said it's a ballot item so will not be brought up at Town Meeting. Don said if someone in the audience at Town Meeting stands up and says they would like an explanation of the changes would that happen. Rick said that would be up to the moderator and if asked, Rick could get up and explain it and that the amended ordinance is simpler than it was last year.

James Gaffney made the point that it's simpler but also removes a large number of cases where an application would have been required for a sign permit so hopefully if folks read through it, it will make sense and they'll see we have made an attempt to reduce the burden of regulation and it hasn't increased it at all. Ben Frost agreed and said it is a more business friendly and realistic proposal.

Chairman Davies asked the Planning Board if they had anything else on this particular article and if not, said he was looking for a vote on the **MOTION. A roll call vote** was taken the result of **7-0-0.**

Rick suggested skipping to Item 7 on the agenda which the board agreed to.

## 7. PROPOSE BALLOT WORDING FOR ZONING ORDINANCE AMENDMENT

The proposed ballot was presented as follows:

> **The following Zoning Ordinance Amendment is the condensed versions of the full zoning changes that is being proposed and recommended by the Warner Planning Board. The complete version is available at the Land Use Office, the Selectmen's Office, the Town Website, and will be available at the polls on Town Election Day, March 8, 2016.**
> Are you in favor of the adoption of Amendment #1 as proposed by the Planning Board for the Town Zoning Ordinance as follows:
>
> > Amend **Article XII Sign Requirements** by revising by restating the purpose, creating content neutral sign requirements, eliminate certain flags from regulation, allow signs painted directly on a building, completely revise the temporary sign requirements, add a substitution clause, clarify certain items by rewording, and make typographical corrections.
>
> Y/N

Chairman Davies asked if the board had read through it. Barbara Annis said she liked the wording but in order to prevent questions coming up would it be possible to restate the purpose "per the Supreme Court Decision" to make the point that we are being made to change it because of that. The Planning Board discussed adding this, the different wording that could be used and that the case details could be given in case someone wanted to research it. Rick said his suggestion is to give as much information as we can provide in a concise manner so that someone who is reading it for the first time has some type of idea what's going on.

Don Hall said they get enough "flak" as it is and if there is something that can be interjected into the warrant article to tell people this is not coming from the Warner Planning Board but that the source is from somewhere else. There was discussion on the verbiage that would achieve this. Chairman Davies noted the phrase in the warrant article "completely revise the temporary sign requirements" is 80% reflective of the ruling. The Planning Board discussed wording of warrant articles, that they had been told in the past they cannot include rationale for them as it is an opinion of the board not a fact, and that could sway the vote on an opinion.

APPROVED

Ben Frost said he had been toying with approaches to the rewording and one way of doing it would be as follows:

*Amend **Article XII Sign Requirements** by revising by restating the purpose, and creating content neutral sign requirements to make the ordinance consistent with the decision of the U.S. Supreme Court in the case Reed versus the town of Gilbert, Arizona and further to, eliminate certain flags from regulation, allow signs painted directly on a building, completely revise the temporary sign requirements, and add a substitution clause, clarify certain items by rewording, and make typographical corrections*

Chairman Davies said it is hard to have all the specifics relative to the case and some of the things they did weren't specific to the case but a reaction to some ongoing things, i.e. the temporary signs don't need a permit except the ones that go back to the Selectmen. Barbara Annis asked when the wording needed to be to the Town Clerk and it was clarified that date was February 2nd. Rick noted there is a Planning Board meeting on February the 1st which led to a discussion as to whether a Work Session would be held this month.

Ben Frost asked the Planning Board if they were okay with the list of things in the Warrant Article with the only question whether and how to refer to Reed versus Gilbert to which Chairman Davies asked if there were things that did not need to be on the list. Don Hall said realistically he wouldn't want someone to tell him this came from Arizonian and the towns people will say what do they care about Arizona and perhaps just including the Supreme Court decision would be better. The Planning Board discussed how it could be worded to not include reference to Arizona with Ben Frost suggesting keeping the list of things but reordering them so that the first four items are those that are directly related to the Supreme Courts case and what remains comes after. To that end, he proposed the following wording:

*Amend **Article XII Sign Requirements** to make the ordinance consistent with a recent decision of the U.S. Supreme Court by revising by restating the purpose, creating content neutral sign requirement, completely revising the temporary sign requirements and adding a substitution clause. And further allowing signs painted directly on a building, eliminate certain flags from regulation, clarifying certain items by rewording and make typographical corrections.*

Rick asked if anyone had discussion on this wording and James Gaffney stated that while the subcommittee did make changes to allow signs to be painted directly on a building, he didn't see that as being a major fundamental change to the ordinance and thinks it's something that could be removed from this statement. On the other hand, they did make changes to the temporary sign requirements such that a large number of common usages are now not required to apply for a permit and he thinks it's important that they add a short piece of verbiage to the changes to reflect that. Various wording for this was discussed and where it would be included. It was agreed to change the Warrant Article as follows:

*Amend **Article XII Sign Requirements** to make the ordinance consistent with a recent decision of the U.S. Supreme Court by revising ~~by restating~~ the purpose, creating content neutral sign requirement, completely revising the temporary sign requirements and adding a substitution clause; and further reducing the number and types of signs that require a permit, eliminating certain flags from regulation, clarifying certain items by rewording, and making typographical corrections.*

The Planning Board discussed how to separate the ordinance impacted by the Supreme Court case with what was not a result of that. James Gaffney suggested putting that section last which was agreed to. The final version of the Warrant Article that was agreed on reads as follows:

*Amend **Article XII Sign Requirements** by reducing the number and types of signs that require a permit, eliminating certain flags from regulation, clarifying certain items by rewording, allowing signs painted directly on a building, and making typographical corrections; and further to make the ordinance consistent with a recent decision of the U.S. Supreme Court by revising the purpose, creating content neutral sign requirements, completely revising the temporary sign requirements and adding a substitution clause.*

The Board discussed the fact that signs painted on a building was not included, that it has been in the ordinance for quite a while, and that it should be added in the first part of the Warrant Article which was agreed to and it was added to the final version as noted above.

APPROVED

Chairman Davies put forth a **MOTION** to send this Warrant Article on to the Town Clerk for the ballot in March; Ben Frost moved the motion and Ken Millender seconded it. A **roll call vote** was taken with the result of **7-0-0.**

**6. <u>OLD BUSINESS</u>**

**Traffic Count Program Status** – Barbara Annis said she is waiting to get together with Aedan Sherman and has talked to DPW Director Tim Allen who is all for this. Barbara continued that if she gets permission from the Board of Selectmen she will take Tim Allen with her to meet with Dean Williams who is the one that proposed the program. Chairman Davies said he believes the main thing Aedan was working on was the five areas that would be done on a three year automatic redo with a program for others and recalled that in March they will be looking for the next years traffic counts.

**Add coloring of one plan to application status** – Rick noted there is a Site Plan application that was included in the meeting packets that has a section on coloring added to the second page on the top which was added by Lois. Chairman Davies recalled that at the last meeting the Planning Board went through Bradfords application which has a similar section and asked for comments from the Board. He had a few small changes on the format and stated the goal is to highlight what's going on without the Planning Board getting confused on things. Barbara Annis said she would like to see it on Subdivision and Lot Line Adjustment applications which Rick agreed with and said the thinking was two contrasting colors with the lot line adjusted area colored with the lighter color with a hash mark across it so that you could see the two properties and the intersection of those properties.

Don Hall said for the secretary, if the applicant doesn't do it before they come in, she should say to them to bring some markers so if they are asked to identify something they can mark it in color or we could have a set of markers. Chairman Davies said he wasn't sure they would want to spend ten minutes to do a lot of coloring but somebody who knows what they're doing can outline an area in ten seconds.

The Planning Board discussed if this is standard practice with other towns, that the wording on the revised Site Plan application would also be on the Subdivision application and that Lot Line application would have the contrasting colors as discussed as well as the other color specifications. Chairman Davies asked the Land Use Secretary to revise the other two applications and bring them to the next meeting. It was then decided that the changes would be left up to Chairman Davies and Land Use Secretary.

A **MOTION** by Barbara Annis to add to the application for Site Plan Review that one drawing should be color coded with the specific colors listed.

After discussion Barbara Annis added Subdivision to her **MOTION** which was seconded by Ben Frost. Chairman Davies asked if that was adding in his change of the slash being changed to an ampersand between Lot Boundary/Building and Open Space/Landscape. This was agreed to as a revision to the motion.

**REVISED MOTION:** to add to the application for Site Plan Review and Sub Division that one drawing should be color coded with the specific colors listed. That the color coded section wording Lot Boundary/Building and Open Space/Landscape be changed to Lot Boundary & Building and Open Space & Landscape.

**A voice vote was taken with a unanimous agreement**.

It was decided the Lot Line Adjustment application would have color requirements and second property owner information added and it would be reviewed at the next meeting. Ben Frost commented that as far as the color on the Lot Line Adjustment the only issue is whether the cross hatching is for the sending or receiving parcel. Barbara Annis asked when these changes would be effective and Rick replied that would be as soon as they are revised and a new date added to the form.

**Correcting Town website Planning Board documents status -** Chairman Davies reviewed that at the last meeting they had discussed that some of the Planning Board documents on the website are not updated. Rick said he had been working with Dan Watts on updating a few of them, the documents are in two spots and should only be in one. He said if you go into the Planning Board tab there are fewer documents and some of them are not the latest forms. Chairman Davies said that Dan has not been responding so he asked Jim

APPROVED

Bingham about it and he said he would work on it and that he would get on the Selectmens agenda if needed.

## 8. SUBCOMMITTEE REPORTS

**Fee Structure Subcommittee–** Chairman Davies stated he and Barbara Annis have worked on a few things and Rick met with the Selectmen the other day to clarify the Compliance Officer charges. Rick said they unanimously made it clear that any expenses for the Compliance Office for the individual inspections should be part of the Planning Boards fee structure. He said the stipend that the Compliance Officer gets would be something that is under a different budget item. Chairman Davies said the question he and Barbara came up with is that there is always one inspection for any project and does that get included in the base fee or as a separate line item on a list of fees so the applicant can see it.

Rick said they are looking at some feedback from the Planning Board on that. Ken Millender asked if there would be cases where a Compliance Officer would be making multiple visits to which Rick replied they have it as a $25 minimum for a Compliance Officer inspection and additional visits per the board. The reasoning was that with some projects it's pretty straight forward and others may involve more so at the time of approval the board will decided how many inspections will be needed.

Don Hall asked, when the Compliance Officer position originally came into play, what was set up for a pay scale, it is hourly or per project. Chairman Davies replied that the compensation is approved each year and the Compliance Officer is paid a stipend of $500/year. Each visit is billed out at $25.00. He said that in talking to Peter Wyman, what he does is go to a site for a short meet and greet to introduce himself but does not bill for that. Rick asked Clyde Carson if the Selectmen send the Compliance Officer out for anything and what would be the cost for that. Clyde said he can't think of any time they have sent out the Compliance Officer although Mary Whalen may have at some point but as far as Clyde knows it would be a $25.00 fee in that situation as well.

Don Hall asked, if the Compliance Officer has a case workload that goes above and beyond what he is capable of handling, will he come back to the Planning Board and ask for more from their budget or the Selectmen to which Chairman Davies said he is not sure. Don Hall said the point he is making is the situation, which has happened before and may happen again, where someone in a position such as the Compliance Officer all of a sudden is granted benefits and a town vehicle. Don said it's not out of the realm of possibility because these things can grow out of control. Chairman Davies said he understands Dons point but doesn't think it's going that way and is getting away from the fee structure discussion.

Ben Frost said he is wondering what the best approach to this is, $25.00 for an inspection is really cheap which is a good thing and the town is well served by that. Ben continued, his concern is how to judge how many inspections a particular project is going to need as they can't know in advance if there are going to be some problems that require return visits by the Compliance Officer. Part two is, if we are collecting money in advance, where does it go. The Planning Board discussed the fact that it goes into an account the Planning Board has set up, that if is exclusively for inspections the funds should be escrowed, and that the funds need to be accounted for, for each inspection. Ben said that the money spent for each project would need to be trackable but not necessarily in individual accounts.

The discussion continued as to whether an escrow account would be needed, how it would be presented to the applicant as a fee and that in theory an applicant could come in and pay the fees and then withdraw the application in which case the funds would have to go back to them. Barbara Annis noted there is an account at Sugar River Bank that is available for the Planning Boards use.

Rick said the other thing that came up at the Fee Structure Subcommittee regarding Site Plan Review was that currently we have a $400.00 base fee and should we have a graduated scale like we do for Subdivision. He questioned how that would be done with Site Plan, would it be per square foot of building. James Gaffney said he didn't think $400.00 was reasonable for a small project like a pole barn or other simple things that are fairly common in town to which Rick agreed. He said it was last discussed three or four years ago and it didn't seem to go anywhere mostly because they could not arrive at a good equation.

The discussion continued with the fact that it could be based on a number of things such as intended use and

APPROVED

size, that many of the tasks required for an application do not vary according to the size of the project such as noticing abutters and making copies of the application, and what is the fairness factor in charging a bigger project more than a smaller project. Ben Frost asked what makes a bigger development more expensive to process than a smaller development to which Rick made the point that many towns have a Planner or a Circuit Rider and that Central Regional Planning is available to look at large projects that may come into Warner.

Ben gave the example of Market Basket coming in with adding additional space, liquor store and the whole she-bang, and the Planning Board decides they need to send it out for independent review. They would set up an escrow account for that and collect funds but that's not part of the application fee. Chairman Davies clarified that the application fee is paying for secretarial duties. The Planning Board discussed when the fee went up to $400.00, what other towns charge, the additional expense in the Town Hall for a bigger project, that bigger projects could weather a bigger fee, and if it is fair to charge a bigger developer more simply because they have the capacity to pay it.

James Gaffney asked for discussion purposes, what does the $400.00 fee include. Rick listed the various duties that processing an application entails and noted he and Barbara had set down with the Land Use Secretary and gone over them which added up to a little over sixteen hours of time. Chairman Davies said that number can vary and be more or less and sixteen hours is close to $400.00. James Gaffney brought up again the example of a simple pole barn, didn't see that it would take sixteen hours to process, asked if templates were being used for communications which was clarified and said he could see bigger projects taking that amount of time. Chairman Davies said they can do more time studies and of what he's seen of other offices there are interruptions and it's not an exact science to come up with these things.

There was discussion of fees being waived in certain situations and the fact that it's hard for the other Planning Board members to understand all of the fees if they don't have them in front of them. Rick suggested stopping the conversation tonight and come back to the board with more complete information.

Peter Anderson asked if the underlying goal is to cover costs and Rick replied that is what the RSAs say, that the Planning Board can charge for the cost of administrating the applications. Peter said he thinks it's going to be difficult to have a fee that is lower for the little guy but still covers the cost. Ben Frost said one thing that is clear is that we cannot make this a profit center, it can only go up to the approximate cost which is arrived at by a lot of guess work and estimation.

Clyde said he is in favor of flat fee and he thinks they have a couple of instances where someone has requested a waiver of the fee due to hardship or from a non-profit which he thinks keeps it fair and simple. Ken Millender asked if there was a provision in the rules that says the Planning Board has the ability to waive fees and Rick clarified it is in both of our regulations.

Barbara Annis said there is one more thing up for discussion tonight and that is when Subdivision are taken in to the Registry of Deeds to be recorded, the registry bills the town of Warner and a check is made out to the town of Warner. She said some of the towns have the applicant make a check out directly to the Registry of Deeds. Ben Frost said he has seen it done this way and if there is no approval, the check gets returned to the applicant. The pros and cons of this were discussed such as bounced checks and insufficient funds and the cost of handling transactions. Chairman Davies said maybe the best thing to do is contact the Registry of Deeds and see what the requirement is.

## 9. COMMUNICATIONS AND MISCELLANOUS

Chairmans Report - Chairman Davies stated he had met with the Board of Selectmen on the Compliance Officer and in general to make sure there is communication between the Building Department and the Land Use Office. Rick said he thinks Jim Bingham is going to set up a meeting with the Building Inspection, Lois, himself and Mary Whalen.

Compliance Officer Inspection Reports – Lois Lord said Peter Wyman would be going out to the Bourke Lot Line Adjustment property soon.

Determination of Site Plan Review Applications – The Land Use Secretary stated no new applications had been submitted.

APPROVED

Selectmens Representative Report – Clyde reported that it is still budget season and they are down to the final offering budget which looks to be coming in at under a 2% increase under this years budget. He continued that a Public Hearing and information night is going to be held on February 3rd on the Solar Arrays with a second one on March 3rd. It was clarified that there will be a Warrant Article for these.

Chairman Davies asked the Planning Board if they wanted to have a work session this month as there is nothing other than a couple of the application forms being worked on and the Fee Structure Subcommittee. Rick said the office is closed on the 18th and his thought is to not have a work session this month which was agreed to by all members of the Planning Board.

**10. <u>ADJOURN</u>**

**MOTION** to adjourn was made by Ben Frost, seconded by Barbara Annis. A voice vote was taken with all in favor. Meeting was adjourned at 8:55 p.m.

APPROVED