

TOWN OF WARNER – PLANNING BOARD

Approved Meeting Minutes

August 1, 2016

7:00 PM

Warner Town Hall, Lower Level

Members Present: Chairman Ben Frost, Vice Chair Barbara Annis, Ken Milender, Selectman's Representative John Dabuliewicz, Ben Inman, Peter Anderson Alternate, James Gaffney Alternate, Darryl Parker Alternate

Land Use Secretary Lois Lord

Absent: Aedan Sherman, Don Hall

1. OPEN MEETING

Chairman Frost opened the meeting at 7:00 p.m.

2. ROLL CALL

Roll call was taken with eight members present and two absent. Chairman Frost asked James Gaffney to sit in for Don Hall and asked Darryl Parker to sit in for Aedan Sherman as full board members.

3. APPROVAL OF MEETING MINUTES

Chairman Frost brought forth the meeting minutes of 7/11/16 for the Planning Boards approval. A few items were noted for correction. A **MOTION** to approve the minutes as amended was made by Barbara Annis, seconded by Ken Millender. A voice vote was taken with a unanimous yes.

4. NEW BUSINESS

Planning Board CIP Requests – Chairman Frost asked the Planning Board if there were things they would like to put before the CIP Committee. He noted in the past two years they had money in the CIP to hire an engineer to look at alternative routes off of Kearsarge Mountain Road and recalled it was around \$50,000. Chairman Frost said the issue remains and whether we would need that amount is not clear.

James Gaffney asked what would actually be studied and were any routes previously identified? Ben said he didn't think there were any routes considered so it would be starting from scratch and he believes it would require an analysis of topography and property ownership.

The discussion continued that the \$50,000 was not approved and was considered to be low priority, that Ed Mical has focused on this in his role as Emergency Management Director, and that there are 850 residents on that road above Tory Rock including the college.

Barbara Annis mentioned that there used to be a town road which was abandoned at the development on the left hand side that went down to North Road. Selectman Dabuliewicz clarified the development being talked about is Highlawn Park. Ben Frost asked if it is Class VI or abandoned and Barbara did not know.

Discussion was had on the fact that someone had heard a road was laid out there at one time but then abandoned, that historically there was a road further up and that one used to go through at Gore Farm down to North Road. Barbara said the driveway at Kimberley Edelmann's is a town road that went down through and Peter mentioned Quimby Road which has only a small piece of it in Warner, the rest being in Salisbury.

Chairman Frost asked the Planning Board if this is something they want to pursue and it certainly would not be starting with \$50,000. The first step would be historical research to determine where there might be existing Class VI highways. Ben said if a highway is laid out and it becomes a town road, mere disuse does not mean it's no longer a town highway. Generally speaking, unless there is a clear expression of intention by town meeting to abandon a road, it still remains a class VI highway.

James Gaffney asked if this is something the Planning Board might want to address with an item at town hall to see if folks want to pursue it as it is going to cost a significant amount of money to do. Ken suggested talking to the Emergency Management Director to see if it's something still on his wish list. Chairman Frost said the difficulty in putting it to town meeting is what exactly would we propose? James replied it would be to see if the town wants the Planning Board to move forward with this and the taxpayers need to prioritize where moneys

going to go.

Barbara asked Ben, as a lawyer, if by having it in the long range plan and Master Plan is that a protection if something should occur; we are recognizing it and therefore could not be sued for negligence? Chairman Frost said he doesn't think whether we have something in the Master Plan or not is the issue or even in the CIP. Anyone can sue for anything but to have a successful lawsuit against a municipality for that kind of issue, it just doesn't happen. There has to be an act of negligence that causes damage as opposed to something that is as speculative as this. This issue really is public safety.

Chairman Frost said if we had something in the Master Plan or some supporting documentation regarding the need for an access route and we had some idea of where some alternative routes might be, if a developer came in and wanted to develop up there, there is an opportunity to require a contribution by that developer toward the cost. There has to be some rationale basis for that.

Ken asked if the rationale basis has to be a defined route. Chairman Frost said if you are going to be assessing fees it should be a route with actual construction cost estimates. The Planning Board discussed this further and arrived at the conclusion that a decision did not need to be made tonight, historical research could be done and that there used to be a book in the Selectmen's Office that Hank Aplington II wrote at least 20 years ago where every road was laid out by year.

Chairman Frost asked Lois to start researching this and mentioned when he was the town planner in Hollis, they had a development the disposition of which hinged upon a map that he found in the state library that was drawn on sheepskin and went back to the 1760's. Based on that, they got a dedication of a right of way through a development.

Ben asked what else the Planning Board might want to consider for the CIP. Ken mentioned Central NH Regional Planning has offers to assist in the updates in writing Master Plans and wondered if we would want to hire them to update our Master Plan which is an example of what could go into a CIP request. Chairman Frost said that depends on how much we want to devote to the Master Plan. We are doing a tune-up of it right now, not rewriting it and Ken's suggestion of Central made him think about the potential digitization of the tax maps and putting them online. Central has the capacity to do that relatively inexpensively in comparison to other vendors. It's probably a multi-year project but he would like to see a cost estimate from them so we can start thinking about it. Ken Milender offered to get the cost estimate. It was clarified that the CIP Committee would need requests by the first part of September.

ROW behind Town Hall – Darryl Parker mentioned that there is work being done behind town hall for the Fall Foliage Festival. Ron and Deb Moore are granting a right of way on the acre of land behind Foothills to be designated for use by the Fall Festival for the oxen pull and lumberjack competition. Eventually, the rest of the year it will be a parking lot for use by the town.

5. OLD BUSINESS

Planning Board Policy on Anonymous Communications – Chairman Frost noted he had a couple of communications, one from Steve Buckley, an attorney at the NH Municipal Association and another from Bernie Waugh, an attorney representing a lot of municipalities throughout the state. Both of them focused not on the question of whether it's a good idea for anonymous communications lodging complaints, but whether names could be kept anonymous. The answer from both of them seems to be yes, because it's not the complaint that effectively initiates an investigation or enforcement action but the activity of the town in response to the complaint. Ben continued, that overall the responses he got were a mixed bag. Chairman Frost said he doesn't have a particular desired direction to go in on this and described the situation which prompted it.

Ken asked if Ben was saying that it's possible that when an initial complaint comes in it could be anonymous but if they need to address the complaint they would look towards it not being anonymous. Ben replied, no and that if someone wishes to remain anonymous there may be legal basis for the town not to disclose the name of the person even if they know who it is. There may be reasons for that, such as if the person who is being complained about has violent tendencies.

James said he feels there are two sides to it; cases where someone might be concerned about their safety and cases where folks agitate excessively and use this mechanism in order to act in a retaliatory aggressive manner. The

problem he has with it remaining anonymous is that it flies in the face of right to know and he doesn't think it's in the best interest of the town.

Selectman Dabuliewicz made the point there is a difference between anonymous and unidentified and asked how often something like this happens. Chairman Frost said it turns out the case in question was effectively anonymous and that this doesn't happen that often and only has to do with issues surrounding things that have been approved by the Planning Board. The Planning Board is not an enforcement body but we do have an obligation to ensure that the conditions we impose upon our approvals are met.

The Planning Board discussed whether a policy should be in place, or if it is something that should be a town wide policy. Janice Loz who was in the audience asked if you protect someone's anonymity, does that show coercion on the part of the board, that the board would be taking sides? Chairman Frost said he didn't know and that he's not sensing a real desire to have a policy and suggested setting this aside for now. If it comes up again in the form of a different complaint from a different unidentified person then we will deal with it then.

Amendments to Zoning Ordinance – Chairman Frost noted that in tonight's meeting packages was a written document of the suggestions submitted by Carol Zablocki at the last meeting. The submitted document is as follows:

Thank you for giving me the opportunity to speak to you today. It was suggested that we come here to meet with you all to have a conversation about zoning ordinance amendments.

More than a few of us in this room have had occasion over the past months to attend Zoning Board of Adjustments hearings.

During those hearings, there were long debates concerning certain words and phrases in the existing ordinance. I am hoping the Planning Board will consider amendments to two areas of the ordinance.

The two areas we are hoping to amend are as follows:

1. *Page 34 Article 17 Section F relative to a Time Limit on granted Special Exceptions and Variances.*

"F: Time Limit: Approvals granted by the Board for Variance or Special Exception are valid for a two-year period unless vested."

The wording "unless vested" is not defined or clear as to the intent for this Time Limit. We are asking the Planning Board to consider amending this to remove "unless vested" and replace it with something more defined, such as:

F: Special Exception or Variance Time Limits:

- A. *If the use or construction so authorized by the granting of the Special Exception or Variance has not commenced within a two year period from the date of the decision, then the Special Exception or Variance shall be deemed to have expired and the ZBA's decision rendered null and void.*
- B. *If after commencement, a Special Exception or Variance is abandoned or discontinued for a period of two years, then the Special Exception or Variance shall be deemed to have expired and cannot be re-established without a new application process and the affirmative decision of the ZBA.*

2. *Page 37 Table I Use Regulations Retail and Services*

The existing ordinance reads:

19. Other amusement and recreation service, outdoor, including camping groups.

19a. Other amusement and recreation service, outdoor, excluding camping groups (Amended March 2015)

3. 20. Other amusement and recreation service, indoor.

We would like to add the following wording to 19, 19a and 20:

1. *19, 19a and 20 relative to the types of services already mentioned to add the wording "event venue and function services".*

We feel that this would be more inclusive and cover other types of indoor/outdoor venues or entertainment.

ADDITIONAL INFORMATION:

I have researched zoning ordinances in several area towns concerning their policies on Time Limits for Special Exceptions and Variances and all have more precise definitions of time limits on granted special exceptions and variances.

Allowing this change does not negate the fact that the original SE or V was granted. An applicant can certainly cite that in their application and the board can then determine if granting the SE or V again has merit or has the district changed in such a way that it would no longer be advantageous to the district to grant the SE or V again.

Ben said he thinks the Planning Board owes Carol a response on this, whether we are going to pursue it or something similar and work on it or we are not going to do it at all. If she wants to pursue a citizen petition we need to give her the time to do that.

Chairman Frost mentioned that a few years ago RSA 674:33, Powers of Zoning Board of Adjustment was amended relative to variances and special exceptions to read “Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.” Ben said there is almost identical language dealing with special exception so they are good for two years following final approval.

Ben then noted our zoning ordinance reads approvals are valid for a two year period “unless vested”. Selectman Dabuliewicz asked if there was case law on what vested means and Chairman Frost said there is tons of case law on it. The discussion continued with the fact that the RSA does not use the term vested, the question of what do you need to do to exercise an authorized variance or special exception, and that ordinance should be simplified which could be done with clarifying the term vested.

Janice Loz in the audience asked to comment and stated she is the Zoning Board of Adjustment Chair. She said the way the board has been looking at special exceptions they run with the land. Every time the board makes a decision on a special exception they are careful about that fact. Chairman Frost said he was pretty sure the case load would say that both run with the land but this issue has arisen frequently because as in many communities there are approvals that have been made by the Planning Board and the Zoning Board of Adjustment and nothing has been done for decades.

James Gaffney suggested making a determination on a case by case basis and Ben said he’s not sure it would be appropriate. It is with regard to Planning Board approvals and the vesting statute but perhaps not the statute on the Zoning Board of Adjustment which was amended in 2013. However it’s within the Zoning Board of Adjustments power to extend that two year period for a good cause.

Chairman Frost said looking at the wording from Henniker in Carol’s document, it is more specific to the use construction and doesn’t use vesting. He said he would like to take some time to inquire of the Planner in Henniker what their experience is on this and whether their Zoning Board of Adjustment has had any issues with it. Ben said that will be reported on at the September meeting.

Selectman Dabuliewicz asked Janice if the Zoning Board of Adjustment has discussed this and she replied they have not but are going to next week. She said at their next meeting they also want to go over the ordinances, see if there is anything they feel needs to be clarified to help them do their jobs better and bring that to the Planning Board. Chairman Frost said they would appreciate that.

Ben noted Carols document also has proposed changes to the Use Table with the addition of a use “Event, Venue and Function Services” to 19, 19a and 20 under Retail and Services. This was discussed along with what type of services would fall under this category and that the size of the event would be an important factor.

The Pumpkin Blossom Farm special exception was addressed as well as what use that fell under, that being “Eating and Drinking Establishment”.

After further discussion Chairman Frost asked the Planning Board if they felt a new category should be created and the board was in agreement to move forward with it. Ben said he would like to prepare an amendment to the Table of Uses for “Event Venue and Associated Function Services” and this discussion would be continued at a later meeting.

Barbara Annis suggested changing the category title to “Retail Services and Other Commercial Activity” and the board agreed on that change as well.

The Planning Board discussed the State Liquor Store, that it had been reported by WMUR that it will be breaking ground in September, and that Accessory Dwelling and Agritourism state statute changes will require a change to the town zoning ordinances.

Chairman Frost noted one of the Municipal Law Lecture series will be on Agritourism, Accessory Dwellings and Signs. There will be three evening lectures, Sept 14-21-28 in Derry, Newington, Keene and Lincoln. On Saturday October 15th at NHMA in Concord all three lectures will be done together.

James Gaffney asked about the State Liquor Store and would it be in the Planning Boards best interest to call them and confirm when they are submitting an application. Chairman Frost agreed and asked Lois Lord to do that.

6. SUBCOMMITTEE REPORTS

Master Plan Subcommittee – The subcommittee did not meet last month but will be meeting August 15th at 7:30 in lieu of a Planning Board work session. Chairman Frost said he will make it unless he is sequestered as a member of a jury as he is on jury duty that week.

CIP Subcommittee – Peter Anderson reported that the subcommittee met in June, have revised the forms, have given department heads the forms electronically and have received back the Police Departments, Libraries, Town Assessor, DPW, Board of Selectmen but not from Parks and Rec, Town Clerks Office, Ed Mical, Cemeteries or Fire Department.

Peter said he is proposing the CIP Subcommittee meet on the 17th or 18th of August at 8 a.m. It was decided to meet on the 18th at the town hall. The final summary sheet still needs to be revised which Peter will work on with Lois.

7. COMMUNICATIONS AND MISCELLANEOUS

Chairman’s Report - Chairman Frost had nothing further to report.

Compliance Officer Inspection Reports – There were none.

Determination of Site Plan Review Applications – Lois reported there are no new applications.

Selectmen’s Report - Selectman Dabuliewicz reported the construction on the round-about will commence the week of August 8th and should be essentially done by the Fall Foliage Festival. There was a preconstruction meeting a few weeks ago and signs should be going up soon to tell people construction is going to happen.

The Economic Advisory Committee had its first meeting in June and will be meeting Wednesday August 3rd. They are proceeding to gather information and assignments were made to individuals to do research.

8. PUBLIC COMMENT – There was none.

9. ADJOURN

Chairman Frost declared the meeting adjourned at 8:25 p.m.