



Planning Board

Working Session - Meeting Minutes
Monday, October 17, 2016

APPROVED

Chairman Ben Frost opened the meeting at 7 pm.

Committee members in attendance: Barbara Annis, Ben Frost, James Gaffney, Ken Milender

Absent: Peter Anderson, John Dabuliewicz, Don Hall, Ben Inman, Darryl Parker, Aedan Sherman

Also in Attendance: Jim and Carol Zablocki

1. Zoning Ordinance Amendments

A. Suggested Amendments Submitted by Carol Zablocki

On page 34 of the 2016 Zoning Ordinance, Article XVII Board of Adjustment, Section F currently reads:

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

Ben shared a slightly modified version of a rewrite suggested by Carol Zablocki, as follows:

F. Special Exception or Variance Time Limits:

A. A Special Exception or Variance approved by the Board will expire after two years from the date of the Board's decision if the use or construction authorized by the Special Exception or Variance has not commenced. This two-year limit may be extended by the Board for good cause. No Special Exception or Variance will expire until at least six months after the resolution of an application to the Planning Board filed in reliance on the Special Exception or Variance.

B. If the use or construction authorized by a Special Exception or Variance is abandoned for a least two years, then the Special Exception or Variance cannot be reestablished without a new application and approval by the Board.

Ben said he felt two years is fairly generous. Further extension is within the power of the ZBA; reference RSA 674.33, page 396. He read, "*I-a. 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 added that it can take a long time to get construction underway.

James said that with long NH winters, he could see where timing could potentially take longer than 6 months. He suggested 9 months or a year may be better.

Regarding the term "vesting", Ben referred to the concept of vesting as provided in RSA 674.39 under the "Five Year Exemption". It says that approval by a Planning Board for sub-division or site plan is protected against local regulatory changes for a period of 24 months, provided that active or substantial building or development commences; then it goes to 5 years. During recession, when it was difficult for developers to move projects along,

this RSA was especially important. Ben noted that sometimes it does take a long time to get a project off the ground. Ben wondered if the Planning Board wanted to adopt 5 years.

Discussion about the lifetime of Planning Board decisions followed. Some felt 5 years was a long time. Others felt it seemed reasonable. Over 5 years, several things can change including the abutters within in a neighborhood and membership of the Planning Board. Some projects, such as the roundabout, take a very long time. Some are much quicker.

After discussion it was agreed to change "six months" to "one year".

F. Special Exception or Variance Time Limits:

A. A Special Exception or Variance approved by the Board will require after two years from the date of the Board's decision if the use or construction authorized by the Special Exception or Variance has not commenced. This two-year limit may be extended by the Board for good cause. No Special Exception or Variance will expire until **one year** after the resolution of an application to the Planning Board filed in reliance on the Special Exception or Variance.

B. If the use or construction authorized by a Special Exception or Variance is abandoned for a least two years, then the Special Exception or Variance cannot be reestablished without a new application and approval by the Board.

Discussion about definitions followed: Abandoned, commenced, good cause.

Ben noted that good cause would be the judgment of the ZBA.

Commenced would be in regards to use or construction. That could include having a bulldozer blade in the ground, which Ben noted is actually a valid test for the current use penalty. Ben again referred to RSA 674.39, specifically the phrase "active or substantial building or development commences"; active and substantial being the key words.

Barbara remembered the phrase "substantial completion" had been discussed at another Planning Board meeting. She found the reference in the definitions section of Warner's Subdivision Regulations, page 3:

***"Substantial Completion:** Substantial completion of project improvements, unless otherwise specified by the Planning Board in connection with a subdivision approval, shall include the improvement of all on-site and off-site improvements specified in the subdivision approval, except for those improvements which are specifically deferred by recorded vote of the Planning Board prior to the expiration of the five year period specified in RSA 674:39."*

Ben also noted another definition from the same regulation:

***"Active and Substantial building or development:** "Active and substantial building or development" shall be deemed to have occurred when building foundations have been installed, inspected and approved by the Building Inspector; basic infrastructure roads and/or access drives are constructed to a gravel base; erosion control measures as specified on the approved plan for the area of disturbance must be installed; drainage systems and swales are completed; utilities have been extended to the site; a certified plot plan of the foundation if required has been submitted; and if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the Town at the time of commencement of such development; and there is continuous productive work on the building structures."*

Ben recommended the first Zoning Hearing for the suggested amendment should be held on December 5th. The second would be in January. This would allow enough time for it to be brought forward as a Warrant Article at the 2017 Warner Town Meeting.

Barbara Annis made a **MOTION** to present the suggested amendment, modified to show one year instead of six

months, at a hearing on December 5. James Gaffney **SECONDED**. All approved.

B. Zoning Ordinances Table of Uses

The second suggestion provided by Carol Zablocki was in reference to the Zoning Ordinance, Table 1 Use References, specifically the "Retail and Services" table.

The suggestion was to add the phrase "event venue and function services" to items 19, 19a, and 20. These lines in the Retail & Services table currently read as follows:

USES	R-1	R-2	R-3	B-1	C-1	OC-1	INT	OR
19. Other amusement and recreation service, outdoor; including camping grounds.		S	S			S		S
19-a. Other amusement and recreation service, outdoor; excluding camping groups (<i>Amended March 2015</i>)					S			
20. Other amusement and recreation service, indoor				S	S		S	

Note: The "S" in the table means "Special Exception".

Discussion followed. It was clarified that "event venue and function services" would be added to the "Uses" column. No changes would be made to the zone columns. It was also suggested that "event venue and function services" could be a new item altogether. The board reviewed the zones.

During the discussion, Ben shared that "Special Exception" is a permitted use subject to certain conditions imposed by the Zoning Board of Adjustments. A "Variance" is a use that is NOT permitted and must face much more rigorous legal tests, adding that in fact most variances should not be granted but often are.

What is the definition of "event venue"? Or "function service"? Discussion continued. Traditionally event and function have broad definitions. Weddings, bridal showers, baby showers, concerts, all fall within events. Function services would include services that support events, catering for example. These would be more commercial in nature and not include someone holding a wedding at their home. Hosting weddings on a regular basis would be commercial in nature and cause the property to fall under the definition of "event venue". The table being discussed is "Retail and Services". It does not apply to private family events.

The board discussed other events in Warner, including the Warner Fall Foliage Festival and Tory Hill Author Series.

Ken Milender made a **MOTION** to post the suggestion as written for hearing on December 5. James Gaffney **SECONDED**. All approved.

C. Agritourism

Ben did not have a concrete proposal regarding Agritourism, noting that in review of the Zoning Ordinance, Warner did not have a formal definition of "Agriculture". Many towns refer to the definition of agriculture as shown in RSA 21:34-a Farm, Agriculture, Farming.

Ben referenced the 2015 court case of Forster vs Town of Henniker. As a result of that case, NH Senate Bill 345, which passed on June 21, 2016, amended RSA 21:34-a, II(b)(5) as follows:

*"(5) The marketing or selling at wholesale or retail, of any products from the farm, on-site and off-site, where not prohibited by local regulations. Marketing includes **agritourism**, which means attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm."*

In other words, agritourism is recognized as part of marketing of agricultural activities. But it has to be an accessory use to the primary farming operation. Ben added that while it does not say "wedding" anywhere, it could fit as an accessory use.

The question on the table: How should the Warner Zoning Ordinance address agritourism?

Discussion regarding the Table 1 Use Regulations, Agricultural table followed. Ben noted "7. Noncommercial forestry and growing of all vegetation" is permitted in all zones. The Town can not prohibited the growing of crops. Other types of agriculture are specifically called out at the top of the table: Aquaculture, horticulture, commercial forestry, and floriculture. Reading the whole table, Ben notes that Warner does not need to change the table in order to be consistent with the RSA. However, if Warner wants to prohibit off-site agritourism, it needs to be explicitly noted in the Zoning Ordinance. On-site is allowed as an accessory use. Off-site, is not covered by the RSA. Ben has no examples of what would fall under "off-site".

This lead to reading a new section of the Planning and Zoning RSA:

"674:32-d Agritourism Permitted. – Agritourism, as defined in RSA 21:34-a, shall not be prohibited on any property where the primary use is for agriculture, subject to RSA 674:32-b, II.

Source. 2016, 267:5, eff. June 16, 2016."

James did not want to see Warner fighting legal battles with agricultural businesses.

Question: How does Warner define agriculture?

Answer: As defined in the State statutes.

Question: Is a garden in my garden primary use?

Answer: No, the home is the primary use.

Question: Is a vegetable garden considered agriculture?

Answer: Yes.

Question: So I can have agritourism at my home?

Answer: Only if the garden is the primary use of the property.

Ben read the new language adopted in RSA 21:34-A, II(b)(5) again (provided above), emphasizing "accessory uses to the primary farm operation". Agritourism is accessory or secondary to the farm operation. So, for example, having a backyard garden does not entitle a home owner to having a commercial wedding venue.

Ben walked the board through the legitimate process someone would have to go through if they wanted to run some sort of agritourism activity.

- ◆ Approach the Planning Board (PB) for a site review because it is a commercial activity
- ◆ The PB would look at the use of the property and assess whether agriculture is the primary use of the property.
- ◆ If no, the PB would not have jurisdiction to review the site plan. A variance would be required via the ZBA.

Barbara asked if agritourism should be defined in the Zoning Ordinance. Ben noted that agriculture was not even there. To include agritourism, agriculture would need to be included as well. Ben suggested doing nothing in terms of adding new definitions. There is no perceived problem at the time.

The PB agreed to not proceed with changes to the Zoning Ordinance in regards to agritourism.

D. Agricultural Use Table: A Conflict?

Prior to the meeting, while Ben was reviewing the Agricultural Use Table in the Zoning Ordinance, he noted a potential conflict. He wondered if there was a conflict between livestock for personal use vs commercial use.

It was quickly agreed that no conflict was apparent.

E. Accessory Dwelling

NH Senate Bill 146 goes into affect in 2017. The bill establishes requirements for local regulation of accessory dwelling units. Ben read the following:

RSA 674:67 Definition. As used in this subdivision, "accessory dwelling unit" means a residential living unit that is appurtenant to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. An accessory dwelling unit may be within or attached to the principal dwelling unit.

Ben noted that Warner's definition is not inconsistent; is it just not as complete. Warner's ordinance includes:

"Accessory apartment" means a separate complete housekeeping unit that is contained within, attached to a single family dwelling, or within an accessory building, in which the title is inseparable from the primary dwelling. [Adopted March 2012]

"Accessory building" means a detached building, the use of which is customarily incidental and subordinate to that of the principal building, and which is located on the same lot as that occupied by the principal building.

"Dwelling unit" means one or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities.

The suggestion is to change "accessory apartment" to adopt the new "accessory dwelling unit". This would mean dropping reference to the title of the property. The Condominium Act does not allow towns to regulate creation of condos short of sub-division approval. Ben believes the current wording is not enforceable and the Town should adopt the new definition as provided in the new RSA.

Discussion turned to Zoning Ordinance Article XIV-B, Accessory Apartment. Ben compared it to the new law. He found the following gaps:

1. An interior door is required.

Currently: **"1.** *The accessory apartment shall be clearly incidental to the primary use of the property. The apartment shall be a completely separate housekeeping unit that can be isolated from the primary dwelling unit."*

Discussion: There is no legal requirement that it be a lockable door. That is up to the owner / landlord.

2. No issues / no changes.

3. The 50% limitation is not explicitly authorized by law.

Currently: **"3.** *Any accessory apartment whether an addition to or contained within the single-family dwelling or accessory building, shall have an area of no less than 300 square feet, no more than 50% of the heated and finished floor area of the primary dwelling unit, and a maximum of 1,000 square feet of gross floor area."*
Discussion: It is not prohibited and can be used to define the primary vs accessory dwellings.

4. No issues / no changes.

5. Reference to the title may violate condominium law.

Currently: *"5. Accessory apartments are not intended for individual ownership. The title shall be inseparable from the primary dwelling."*

Discussion: While not enforceable, there is likely an upcoming amended to the Condominium Law.

6. Do we want to maintain this limitation of use?

Currently: *"6. Accessory apartments may be located in a detached accessory building where allowed in TABLE 1 – USE REGULATIONS of this Zoning Ordinance only if the detached accessory building contains another use by the primary dwelling such as a garage with an apartment loft or section of a storage / barn building."*

Discussion: As written, this prevents someone from building a backyard cottage, such as a "granny pod". The accessory building could share septic, assuming it can handle the increased load. The board had mixed views. Barbara and Ken both expressed concerns about urban sprawl. Ben and James did not share the concern. With split views, the board moved on.

7. Do we mean to say that the owner must occupy one of the units?

Currently: *"7. The owner shall not separately lease both the primary dwelling unit and the accessory apartment at the same time."*

Discussion: Under the new law, Warner can require owner occupancy of one of the units. Enforcement is another issue. It was suggested to rewrite this to read: *7. The owner must occupy one of the units.* However, in further discussion it was clear that the phrase "occupy" is confusing. Owner occupancy does not mean the owner has to be there. It means he has to have tenancy; that he can't rent it out to anyone else. It was agreed to KEEP the wording as is.

At 8:22 pm, Ben summarized the following recommended changes to the Zoning Ordinance:

- 1) Replace Warner's existing definition of "accessory apartment" or "accessory dwelling unit" with the statutory definition without change.
- 2) In Article XIV-B, item 1, add the clause "but shall have an interior door connecting it to the primary dwelling unit".

James **MOVED** to post the changes for hearing at the December 5th meeting. Ken **SECONDED**. All were in favor.

2. Next Meeting

December 5, 2016. 7 pm at the Town Hall.

3. Adjournment

A motion was made and seconded to adjourn the meeting at 8:31 pm.

Respectfully submitted,
Kimberley Brown Edelmann
Recording Secretary