

# TOWN OF WARNER – PLANNING BOARD

## Meeting Minutes

March 6, 2017

7:00 PM

Warner Town Hall, Lower Level

**Members Present:** Vice Chair Barbara Annis, Selectman’s Representative John Dabuliewicz, Ken Millender, Don Hall, Darryl Parker Alternate

**Also Present:** Land Use Secretary Lois Lord

**Late Arrivals:** James Gaffney Alternate

**Absent:** Chairman Ben Frost, Aedan Sherman, Ben Inman, Peter Anderson Alternate

### 1. OPEN MEETING

Vice Chair Annis opened the meeting at 7:00 p.m.

### 2. ROLL CALL

Roll was taken with five members present and five absent. Vice Chair Annis asked Darryl Parker to sit in as full board member for Aedan Sherman.

3. **MINUTES APPROVING** – Vice Chair Annis brought forth the meeting minutes of 2/6/17 for approval. Selectman Dabuliewicz has some minor corrections and made a MOTION to approve the minutes as amended, seconded by Ken Millender. A voice vote was taken with all in favor 5-0-0.

### 4. NEW BUSINESS

#### Public Hearing Home Occupation Conditional Use Permit

Vice Chair Annis brought forth the following application in regards to a home business.

**Applicant:** Paula Bailey and Terri St. Laurent, OCP Designs LLC

**Property Owner:** Paula and Mark Bailey and Terri St. Laurent

**Property Location:** 29 W. Main St, Map 32, Lot 27, Zoning District R-1

**Description:** Office and studio space for an interior design business. The majority of business with public is conducted at clients home or is web based. Customer contact on premise is infrequent and by appointment only. There may be occasional FedEx or UPS delivery of small home décor or office supplies.

Barbara invited the applicants to speak before the board. Mrs. Bailey explained they own an interior design business and work from home creating artwork and home décor items. They would like to put a sign up for decorative purposes and would like the opportunity at times to bring clients to the business to look at artwork. Other than that the work is done at the client’s house.

Barbara clarified where the property is located and that it is Dick Violette’s old house. She asked if the board had any questions. Selectman Dabuliewicz clarified that the business operated only in the day time and Mrs. Bailey said they like their residential life in Warner village and plan to keep it that way. She continued, they have been in business since 2005 in another town and in that time have only had seven clients at the business so it is very infrequent and the majority of work is done at the client’s house. Darryl asked if both Mrs. Bailey and Ms. St. Laurent lived there and was told they do.

Barbara asked a few questions about where in the house the business is located and noted that they would not be using 25% of the house for their business. The discussion continued on the sign size and color and

Mrs. Bailey said she has gotten the sign permit from the town and she pointed out the proposed location of the sign which will be 105' from the sidewalk.

**a. Review application for Acceptance**

Darryl Parker made a MOTION to accept the plan as presented; MOTION was seconded by Ken Millender. A voice vote was taken with all in favor 5-0-0.

**b. Close meeting and open Public Hearing (if requested by abutters)**

There was one abutter comment from Timothy and Donna McGinley of 28 West Main Street saying they live across the street and wanted to speak in support of the application. Mr. McGinley stated they have gotten to know the Baileys over the past couple of months and they don't feel this business will have any negative impact to the community.

**c. Close Public Hearing and reopen meeting**

Barbara asked the board to review the application check list. Darryl clarified with the Land Use Secretary that the fees had been paid and asked when the Notice to Abutters had been mailed out which was February the 22<sup>nd</sup> and did provide the information that the meeting was being held tonight.

**d. d. Action Taken – Approve/Deny/Continue**

Selectman Dabuliewicz made a MOTION to approve the Home Occupation Conditional Use Permit; MOTION was seconded by Darryl Parker. There was no further discussion and a voice vote was taken with the results of 5-0-0.

**James Gaffney arrived at the meeting at 7:15.**

**5. OLD BUSINESS**

**Mike McChesney, Map 30 Lot 32 – Conceptual Consultation follow up**

Vice Chair Annis asked if the board was amenable to skip down the agenda and address old business at this time, all were in agreement. She noted that Mr. McChesney was before the board with a continuation of a conceptual consultation. Lois handed out some documents that Mike had submitted which the board took a few minutes to review. Barbara asked James Gaffney to sit on as full board member for Ben Inman. She noted the last time this appeared before us there were several things that were missing. We had not heard anything from the Fire Department and Mike had not given the board a formal request to amend his site plan. She noted they have both of those documents tonight and so can proceed.

Don Hall said he was disturbed and needed some clarification on the letter from the Fire Chief which says that after conferring with Peter Wyman and reviewing his meeting with Mike he has concerns. Don asked Mr. McChesney if he had met with the Fire Chief.

Mr. McChesney stated that the Chief has not met with him as he hasn't returned any of his phone calls and continued by saying that Peter was sent to him in lieu of Tom Baye and was filling in for him as building inspector. Mike also met with Tom Baye. The conversation continued as to when the meetings occurred, that Mike felt he did not get correct answers on some of his questions but that Tom had suggested solutions to the egress situation. Mike said he thought Peter was the wrong entity to talk to as Tom issues Certificates of Occupancy so he met with Tom after Peter. Peter then talked to the Fire Chief but since Mike has not been in contact with the Chief he's not sure what specifically the Chief is calling out as being issues.

Mr. McChesney said he is here to make an application to see if the Planning Board is okay with him adding a couple of apartments to his commercial location. He doesn't feel that he needs to provide 100% of his plan before he asks for permission to do so as he has to go through that process with Tom Baye before he gets a

Certificate of Occupancy. Vice Chair Annis stated it was her understanding that Mr. McChesney doesn't have to go through new site plan, but is amending his original plan.

The discussion continued on the building and safety codes with Mr. McChesney stating he had reviewed many international business codes and fire codes that are written for the entire breadth of what gets built for the most extreme scenarios. He made the point that there are exceptions to the codes for smaller and older buildings like his with leeway for the structure to be used as they don't expect you to destroy an historic building to gain an inch here and there.

Don Hall said when you put people in a building you want them to be safe and everybody involved in this needs to be on board. All it takes is one incident for something to go wrong in that building and if everyone hasn't signed off on this there would be hell to pay.

Darryl Parker stated that his understanding of how a Certificate of Occupancy works is that no one can occupy the building until it passes inspections which are the way it was when he was opening Schoodacs coffee shop. He said he is not clear on what we don't cover by having the town sign off with the COO at the time it's ready to go.

James Gaffney noted what is being discussed here is change of use for part of the building and it seems that it's only fair for Mr. McChesney to understand what he has to do in order to get to the point where he can be comfortable making these changes. If he is not getting the answers he needs from someone in the Warner town government, wouldn't that be the responsibility of the Selectman to have a discussion with the involved parties to get everybody to the same table so there can be clarity on this? Absent information no one can make an informed decision and it's not fair to the applicant.

Mike McChesney said he totally agrees and the point he is trying to get across is this is not the forum where we decide what codes work. This is Land Use and Commercial Use and he is just asking permission to pursue this project. He can't do anything and would be a fool to start building without doubling back with Tom and the Fire Chief and finding out what they like or don't like about what he wants to do.

James said the other side of this equation is that while the Planning Board is about use they also rely on the Fire Chief to provide guidance on whether he thinks this is a sane decision. He is not implying that it's not but there is a reliance on the professionals that exist which is why his comment was to the Selectman to perhaps help expedite.

Selectman Dabuliewicz said this is the first he has heard that the Fire Chief has not talked with Mr. McChesney and he plans on talking to him about this. He continued, between Darryl and James they are somewhat making an argument that you don't need the Planning Board because of the COO. Part of the Planning Boards process is to consult with the appropriate officials to make sure that the things we aren't expert at are addressed as we're doing our deliberations. Also, Peter Wyman is the Compliance Officer and on the 9<sup>th</sup> of January the Land Use Secretary was asked to contact him and the Fire Chief for their input. The discussion continued on the fact that the Fire Chief had not met with Mike, had a month to do so and relied on Peters visit for his information. It was clarified with the Land Use Secretary that the week after the first meeting that Mr. McChesney met with the board; she had emailed Peter and the Fire Chief asking for their input.

Darryl said that assuming we can get a sign off from the Fire Chief on a plan, does the board have any issue with a Fire Chief approved progression of putting apartments in the building. Darryl said he felt that Mike is asking if he should make an investment on this project because he is unsure of the Planning Board which Mike agreed with. Darryl said if the town can come to some resolution in terms of fire safety and is

something they both can agree to, do we have any other problems with moving forward with the rest of the application?

Selectman Dabuliewicz stated he knows it's common practice to have these officials look at proposals and the way it's being presented here is that we could conditionally approve it based on the Fire Chief visiting the building and being specific about what he believes is required that isn't there. He asked Barbara if that was accurate and she said it is and she can understand where Mike is getting frustrated but Peter Wyman is a Compliance Officer which is different than Tom Baye who is a building inspector. The building inspector is looking at the building and its condition and Peter is life safety which is what we should be concerned about so she puts more weight into what Peter says. The board and Mr. McChesney discussed the differences in what the Compliance Officer position and the Building Inspector are responsible for, the fact that the Compliance Officer has only been in existence for about two years and that the Fire Chief has the final say on occupancy.

Darryl made a MOTION that the board accept the amendment as proposed with the condition of a Fire and Life Safety approval from the Compliance Department of the town of Warner. Motion was seconded by Ken Millender. A roll call was taken with the result of 5-0-0.

Don Hall stated this incident brings something to light which is the Selectmen need to step up and say something to the heads of department if they're not doing their job. There are many issues at stake and we may have more come before us, we have had many in the past. For some reason we have a stumbling block that we need to clear. Barbara said that is between the police, highway, life safety and so on and that is very true. Darryl Parker said that from an economic development perspective there is an expediency factor.

## **NEW BUSINESS – continued**

### **Pre Determination of Site Plan Review– Kellen Neeb, Pet Grooming Salon – 25 East Main Street**

Vice Chair Annis asked the board members to review the application as they had just received it this evening. Ms. Neeb then introduced herself and addressed the board stating she wants to open a pet grooming salon, having moved to New Hampshire about 8 years ago from New Mexico. She had salons there in Santa Fe and Taos. The salon would be in the Velvet Moose building.

Barbara Annis noted the diagram Ms. Neeb had submitted and that she sees the front access and the handicapped access and asked which way grooming clients would be entering. Ms. Neeb said she is flexible as there are many options for entryways and she thinks it would be best to route them on either side of the building rather than up the front steps. The side entrance directly off of where the salon space will be was discussed with Mr. Herzog the property owner who stated it was originally put in as an emergency exit but could be used as an entrance with a pathway installed. It currently has to be open for access to the propane tank in the rear.

Don Hall asked if this section of the building has been occupied before and was told it was a consignment shop for kids clothing. Parking for the business was discussed and Ms. Neeb said that most of her clients come by appointment only and she anticipates possibly 4-8 a day, there is a drop off time of about 10 minutes, then they would return to pickup in 2-3 hours.

Darryl Parker asked about the building heating system and was told it was with forced air returns in the Velvet Moose dining shop and a cold air return in the Cobwebs shop. Darryl asked if there were concerns about the food shop being next door to the pet salon. Mr. Herzog explained that the health department requires that pets aren't allowed beyond the screen door entrance to the Velvet Moose which is their policy.

James Gaffney noted there is one central heating system and asked about concerns of hair and other matter. It was noted there is currently a barber shop in the building and there were no such concerns with a pet salon. Darryl asked about a place for animal clients who need to go to the bathroom and was there an area outside the side entrance previously discussed. Mr. Herzog said there is room in front and behind the building for that.

Barbara Annis asked about potential grooming clients who may have been sprayed by a skunk and was reassured by Ms. Neeb that she usually offers remedies to handle it at home rather than have them come into the shop and she would continue that policy.

Selectman Dabuliewicz asked about the parking. There are 5 spaces in front of the building and 3 alley spaces. Mr. Herzog said they park in the alley and have always made the end of the alley available if anyone comes in and needs to use the handicapped entrance.

Darryl Parker made a MOTION that no Site Plan is required, seconded by Don Hall. A voice vote was taken with all in favor 5-0-0.

## **OLD BUSINESS – continued**

### **Excavation Permit Renewal Letters**

#### **Warner Aggregate**

Aaron Wexler was in attendance to represent Warner Aggregates. Vice Chair Annis gave the board a few minutes to read the letter from them. Darryl Parker asked for clarification on the location which is behind the Davisville Flea Market. Barbara noted they are seeking to renew their excavation permit and the permit will be good for three years.

Vice Chair Annis stated the only comment she had on the letter was regarding the site walk which she did not do last year and is required every year. She said she would like the board to be notified when the anticipated closure of part of the pit happens and they would do the site walk then. Don Hall said on the resale side of it, if there is any restoration to be done that needs to be noted too.

A discussion on the restoration ensued with Mr. Wexler stating there is an existing plan that's part of the AOT approval which was submitted to the town during the last permitting process per Mr. Davies request. It includes a reclamation plan.

Vice Chair Annis asked what the board's desire was. Mr. Wexler noted they don't have any changes but last time there were a lot of questions so he thought it prudent to be present tonight.

Vice Chair Annis proposed a MOTION to accept the application and allow them to excavate for another three years but notify the board when the closure occurs. MOTION was moved by Darryl Parker, seconded by Ken Millender. A voice vote was taken with all in favor 5-0-0.

Further discussion was held concerning when the closure would be done which is mostly the September/October timeframe and the board will be notified if some reason they don't do the closure.

#### **Courser Excavation**

The Courser Excavation permit letter was reviewed. Darryl Parker made a MOTION to approve the permit, seconded by James Gaffney. A voice vote was taken with all in favor 5-0-0.

## **NEW BUSINESS – continued**

### **Letter of Support Request for Warner River Nomination**

Vice Chair Annis made sure the board had read this request through. James Gaffney asked for an explanation on the Planning Boards involvement in this matter. Barbara said all she can think of is that they feel the more support they can get from town officials the better chance of reaching legislature. James said he didn't see how it's within the purview of the Planning Board.

Discussion continued that this request is soliciting a designation of the river, there are land uses involved next to rivers which are effected by existing laws, with James adding the river nomination process will strip owners of their deeded rights to use the river which Selectman Dabuliewicz disagreed with and said he has never heard the issue raised and has not seen anything in the legislation about it.

James gave one example and stated the legislation that is being pursued prohibits, for example hydro, up and down the river. Selectman Dabuliewicz said his understanding is that they have proposed classifying sections of the river so those things are not prohibited as this was an issue that was raised by a number of abutters to the river. We have a concept in the state and federal constitutions that say you can't take people's property rights without compensation.

Don Hall stated he would want a lot more information on this and whether or not the river is protected enough. There is apprehension on what an organization could dictate to happen with a lake as they did historically by releasing water from nearby lakes to power mills at the river.

Darryl Parker stated it was his understanding that the primary outcome of this multi-municipality agreement was the formation of this local advisory committee which then conducts the surveys to keep Planning Boards like us apprised of potential damages to the watershed, etc. The local advisory committee is made up of a regional group with a representative from each town and the group itself really doesn't have any teeth to do anything.

Discussion continued on the states existing authority of the river, insuring that deeded rights aren't infringed on in any way with one board member stating he has property on the river and has no concerns about that at all.

Vice Chair Annis said she was at part of the Board of Selectmen's meeting where this was presented and had researched the law on this issue. She said it refers to RSA 483 and there are a couple of things in the law which do bother her. She read the following from the letter as follows: *After Warner River receives the official status, then there is going to be a committee formed of volunteers.* She stated at the end of the letter it says *and makes recommendations for how to protect the river and its many uses for generations to come.* Vice Chair Annis said if you read RSA 483:10 it talks about River Corridor Management Plans, permitted recreation and non-recreational uses, existing land uses, and all of this will be what this committee is doing so they will be affecting the river.

Barbara said she is also bothered by the fact that the local river management advisory committee may apply for and accept from any sources, gifts, grants and so on. The committee may without further authorization expend these funds so received to carry out their duty. Vice Chair Annis said the committee may have funding that we may not be able to control. Under RSDA 483:9-c the last sentence says it is part of the Master Plan as an adjunct to the local Master Plan, adopted and no such plan shall have any regulatory

effect unless implemented through properly adopted ordinances. She said there is a lot of control there. Darryl Parker said he believes that counters the argument that property rights are affected.

Don Hall said the other disturbing thing is that a year, year and half ago we had a letter about a business trying to establish in Bradford at the old mill. Everybody voiced their opinion and they went ahead and put a junkyard in so what good does it do. Some of these towns don't have regulations so why bother to oppose something when they're going to go ahead and do it anyway. Whatever comes out of there could flow into the river and kill every fish that is in it.

Ken Millender said isn't one of the purposes of this protection act to notify all the towns of that kind of thing so that we can all respond? It was agreed that it is. Darryl Parker stated it adds a layer to the Site Plan Review from what he remembers from the meeting. The local advisory committee from the designated river now has an item on the site plan so that would have to be added to the application, to have them sign off on it if it's relevant.

Vice Chair Annis stated the local committee is also going to be made up of every town so that Bradford will have a say in Warner and Henniker will have a say. Selectman Dabuliewicz made the point that they don't have a say but can raise issues, there is no impact other than to bring attention to the appropriate boards. He continued, RSA 483 doesn't say there has to be a Management Plan but that it will be encouraged.

Don Hall and Selectman Dabuliewicz said it has a long ways to go with it having to go through DES first before it's presented to the legislature. Ken Millender noted before that it has to get through the local boards and we have a letter from the Board of Selectmen giving their support to the nomination and undoubtedly the Conservation Commission has already done that as well as the Warner Village Water District.

Vice Chair Annis asked the board what they would like to do on this matter. Don Hall made a MOTION to table the issue until further notice. James Gaffney seconded the motion. Ken Millender said they are asking for a letter so we should have a vote on whether to do that or not. Barbara noted there was a MOTION on the floor already and a roll call vote was taken with the results of 2-3-0 with the Vice Chair abstaining from the vote. Final result was that the issue would not be tabled.

Discussion was held on a letter being sent and whether or not to use the sample that was given. Darryl Parker made a MOTION to send a letter using the sample that was given, seconded by Ken Millender.

Selectman Dabuliewicz asked for a few minutes to review the sample letter. Darryl Parker noted that he wanted to make sure the minutes read that we will have to amend our Site Plan Application were this to pass. Lois stated she did note that. Ken Millender clarified Darryl was talking about the final passing of this in the legislature.

James Gaffney the beginning section of RSA 483 explicitly prohibits dams, hydros and any of that. Ken Millender clarified that did not apply to those in current use. James referred again to RSA 483:9 and read as follows: *The following protection measures shall apply to a river or segment designated as a natural river:*

*I. No dam or other structure or improvement that impedes or significantly alters the free-flowing condition or natural character of the river or segment shall be permitted, certified, constructed, or operated in such river or segment.*

The discussion continued on the designation of natural sections, that all the segments that have been identified that have those kind of rights have been changed from natural to allow that, and that the proposal does not request natural river designation for most of the sections there is concern about. Darryl Parker noted that any site that has historically had a damn is grandfathered in. Ken Millender stated the river is

broken into segments with designations such as natural, urban or rural and so RSA 483 refers to specific segments and what is allowed within that segment.

Don Hall asked where the Shoreline Protection comes into play and Darryl noted it's a federal program and not covered by this. It was discussed that there is a large document with all the rivers that have been designated and Selectman Dabuliewicz had reviewed it.

Vice Chair Annis stated the motion on the floor is to accept the letter that is a sample in the packet to sign as the Planning Board. A roll call vote was taken on the MOTION with the result of 2-3-0, motion failed. Selectman Dabuliewicz said he felt we should take our time to look at it and have the Chairman look at it as well before we act on it.

James Gaffney stated if the town supports this and due diligence has not been done to protect peoples deeded rights, the town is then liable in supporting this action and may come under some sort of legal challenge. Selectman Dabuliewicz clarified that the designation is made by the legislature, not the town.

Vice Chair Annis reiterated that we know we're going to be writing our own letter and she assumes that would be on the agenda for approval next month. Lois Lord stated that as an aside, Central NH Regional does not have to have anything to the DES until June 1<sup>st</sup> so there is some time.

## 6. SUBCOMMITTEE REPORTS

**Master Plan Subcommittee** – Vice Chair Annis said she doesn't believe they met since the last Planning Board meeting. Darryl Parker noted this is his last meeting with the Planning Board but he will complete the section he is working on for the Master Plan and submit it to the Land Use Secretary.

## 7. COMMUNICATIONS AND MISCELLANEOUS

**Chairman's Report** – There was none.

**Compliance Reviews** – There were none.

**Secretary's report on determination of Site Plan Review Applications** –The Land Use Secretary had a few items to note.

The mylar for Beverly Mocks Subdivision was finalized so it will go to Merrimack Country Registry of Deeds this week.

There is a potential site plan as a gentleman is going before the Zoning Board Wednesday night for a special exception for an indoor shooting range and gun retail store at Exit 7 on Warner Road. If that goes through he'll submit his application for a Site Plan Thursday and will present at the April Planning Board meeting.

The Police Chief had an email from a company called Kearsarge Valley Towing and Recovery asking why the PD wasn't using this towing company. Chief Chandler called the Land Use office to see if we were familiar with the business and if they had done a site plan. The owner who lives on Split Rock Road came in the middle of 2015 to get a special exception to build residential in a commercial zone. At that time he talked about possibly having a garage service at his home.

He has a towing service out of Concord and has a business card with the Split Rock Road address on it. There is no garage there, he's on the fire department and another person on the fire department keeps one of his tow trucks at his place on Main Street so they have been towing cars from here as if the business was here. What happened at least once is that they towed a car from here to Concord and was charged \$300.



The Police Chief was wondering if the Planning Board could address this. They could write a letter to the business owner to make sure he knows if he is going to have a business location in town, he needs to come before the Planning Board. He's misrepresenting his business because it's not located where he's saying it is. Lois asked the board what they would like to do.

It was decided that the Land Use Secretary would write a letter to the business owner asking if he was operating a business here in Warner.

Vice Chair Annis brought forth a meeting she attended regarding TAC Regional Project Ranking and passed out copies of documents. The first was a meeting of the Transportation Advisory Committee Subcommittee in regards to the 10 year plan, there were 5 applications to be given to Central NH to be forwarded on to the state. They went by a schedule, had several things to consider and gave them all a score. Barbara noted the one that scored 1 was the I-89 exit 1 southbound in Bow where you come off Logging Hill Road. She said it took about 2 hours to go through all of it.

The whole TAC Committee met for another meeting where Bill Watson from DOT presented and the committee sat and played games. Everyone had a clicker and chose whether they wanted reduced congestion over freight mobility, traffic volume over facility, safety measures over safety performance. Vice Chair Annis said locally they chose to reduce congestion over freight mobility, alternative modes got a low score, network significance they went with traffic volume over facility importance, safety measure over performance, road surface over bridge assessment.

**Selectman's Representative Report** - Selectman Dabuliewicz stated the Fire Station conceptual plan is done and they will have a presentation at town meeting on it. They will be asking for \$182,000 for Phase Two which is the actual design.

James Gaffney asked if there would be something presented to the town to talk about the anticipated cost of the new Fire Station. Selectman Dabuliewicz said he assumes it will be a 20 year bond. Don Hall said the day the presentation was made at the Transfer Station they did an excellent job and got a lot of good feedback and according to that presentation the estimated cost is \$2.8 million.

**8. PUBLIC COMMENT**

There was none.

**9. ADJOURN**

A MOTION to adjourn the meeting was made by Darryl Parker, seconded by James Gaffney. The meeting adjourned at 9:10 p.m.