

**Approved MEETING MINUTES
TOWN OF WARNER PLANNING BOARD**

February 5, 2018

7:00 PM

WARNER TOWN HALL - LOWER MEETING ROOM

5 East Main Street, Warner, NH 03278

- **OPEN MEETING**

- **ROLL CALL**

Peter Anderson	Don Hall	John Dabuliewicz
Barbara Annis	Ben Frost	Ken Milender
James Gaffney		

Ben Inman is absent. James will vote in place of Ben Inman.

- **APPROVAL OF MINUTES**

January 22, 2018

Motion: by Barbara Annis to defer review of minutes until Ben can review the motions with Diane.
Second: James Gaffney
Decision: Unanimous approval to defer approval until the next meeting.

- **NEW BUSINESS**

1. Public hearing on proposed zoning AMENDMENTS

Before the board are the four Amendments, previously discussed and part of the public hearing on December 10, to be sent to the Town Clerk to be included in the March voting. Due to an oversight in a change in statutes, abutters in the Intervale (11 properties) and B1 (54 properties) districts needed to be notified of the proposed changes in zoning, thus the Amendments will be voted on again. Abutters have been notified which also drew the interest of residents, many of whom were in attendance.

- **AMENDMENT A: Use Table – Retail and Services**
- **AMENDMENT B: Define “Essential Services”**
- **AMENDMENT C: Define “Variance Notation in Use Table”**
- **AMENDMENT D: Limitations on Accessory Dwellings**

AMENDMENT A: USE TABLE – RETAIL AND SERVICES.

Selectman **Clyde Carson** and resident **Alice Chamberlain** contacted **Ben Frost** about the Amendments, and wanted to clarify resident issues that these amendment changes were possibly in response to the Dragonfly vote by the ZBA in January. **Ben Frost** clarified that the proposed changes were introduced by the ZBA in a letter dated December 14, 2016, long before the Dragonfly gun range case. Thus, they are unrelated. However, there is renewed interest by the public. The planning board started reviewing this in October, narrowed it down it down in November, and a public hearing on December 18.

Ben Frost researched case law on this issue, asking an intern in his office to do some research, without the context of the ZBA Dragonfly decision. The research and the renewed public interest weighed on the decision for Ben to recommend removing Amendment A: retail and service from list.

With regards to Amendment A, based on research and prepared materials, discussion with Alice, **Ben Frost** stated that, considering his research and the renewed public interest, he is not in favor of putting this forward for town meeting. **Barbara Annis** stated she feels the Amendment should be withdrawn due to current public discussion, and that the change requires further discussion to determine what the ZBA is looking for.

James Gaffney inquired if anyone doing research had considered State Statute 159:26, Firearms, Ammunition, and Knives: and James read the entire statute. He indicated that he did not see how the Amendment, or the original Amendment, pertains to a retail firearm store; the town may not adopt ordinances upon the subject at all. **Ben Frost** said that he understands the statute very well, and the issues of preemption. Ben commented that in his email to Alice Chamberlain, with regard to other provisions in our zoning ordinance, such as the regulation of sexually oriented businesses, courts have consistently held that while such uses can be regulated, they cannot be prohibited outright. Right now, it appears that the structure of our zoning ordinance would outright prohibit the sale of firearms because they are not specifically included in a list somewhere.

James Gaffney felt that was not accurate. And **Ben Frost** clarified that he is not saying that our ordinance is consistent with state law, but that is what our ordinance says, and he thinks we have a problem there.

John Dabuliewicz discussed that there was a fair amount of confusion about what could and could not be sold in a retail establishment. **Don Hall** stated that at some point the town will expand and grow, when the board makes a recommendation or a decision, it is in the best interest of the town, and for now the board cannot win. **James Gaffney** raised concern about lawsuits against the town due to the ambiguity in the current language. **Ben Frost** noted that because there is so much public interest, and we have only tonight to work on this, we should take this up at another time, and **Andy Bodnarik** offered to help over the summer.

BOARD ACTION:

Motion: Ken Milender motioned to **withdraw** the **Amendment USE TABLE – Retail and Services** from the Amendments going before the town in the warrant in March.

Second: Barbara Annis.

Decision: **Approved, 5-2, with Don Hall and James Gaffney dissenting.**

Ben Frost noted that the definition of convenient store is also gone by not including Amendment A.

AMENDMENT B. ESSENTIAL SERVICES.

To add definition of Essential Services to the town's zoning ordinance. Currently, the use table refers to essential services but provides no definition. There is definition of essential services in the town's telecommunication's ordinance which is, technically speaking, part of the zoning ordinance, but is always looked at as a separate thing. We would like to take the definition from the telecommunication ordinance and simply copy it into the zoning ordinance.

Wireless Telecommunication Facilities Ordinance.

Definition:

1001:05 Essential Services: Services provided by public utility or government agencies through erection, construction or maintenance of underground or overhead gas, electrical, steam, or water transmission and distribution systems, and collection, communications, supply or disposal systems. Facilities necessary for the provision of essential services including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith.

This would apply to the entire zoning ordinance, everywhere you see Essential Services in the Zoning Ordinance.

John Dabuliewicz: I just want to note for the record that the Zoning ordinance cannot be imposed on government entities. That is still true.

Essential Services will remain.

AMENDMENT C: DEFINE "VARIANCE NOTATION IN USE TABLE"

Where you see a blank in the use table is something that requires a variance. There was a divided vote on this, with John Dabuliewicz felt it was an invitation for people to apply for a variance if you put a V in the Use Table. John's opinion is that you don't want to advertise Variance, and it is a very difficult threshold to meet.

Discussion about having a V vs NP (not permitted) vs. blank. Some people feel that having a V, or having NP is an invitation for people to apply for a Variance which should be very difficult to get.

Alice Chamberlain said that she thinks there is a difference between V (permitted by variance) vs not permitted, variance required. She could not find an example anywhere in NH where they put in a V. Usually it is left blank or an X, and either one is not permitted, or not permitted variance required. She is not sure if there is a legal difference, but there is a difference in message.

Barb Marty (on the zoning board) said that having the blank makes it clear that it is not allowed. She believed that at the bottom of the page there is a key (page 36. There is not a key.)

Andy Bodnarik: Said that they had the same discussion when he was on the ZBA. He thinks that people were confused about what a blank in the table means. Depending on what letter you use, you can be sending a message. The board that he served on took the variance very seriously, and was well-trained.

Janice Loz said that when the ZBA discussed this, they were just trying to show permitted vs not-permitted. New members of the ZBA, and members of the public were confused.

James Gaffney said that he does not feel granting a variance is being discussed as much as it should, and it should more difficult to get, it is a very high threshold to meet, and that variances are granted too frequently without meeting the clearly outlined and established case law.

George Pellettieri and **Alice Chamberlain** expressed their gratitude to the Planning Board and the Zoning Board for the work they have done on behalf of the citizens of Warner, and grateful to the citizens of Warner for gathering to discuss important issues.

John Dabuliewicz: "I would like to say something about the Zoning Board. I was not castigating the work of the board, or the people on it, merely pointing out that the section I'm talking about, (page 33 of the ordinance) "unnecessary hardship" which I recall having a very difficult time with (in Boscowan) it, says very specifically (and that was also the case in 1930's when the Supreme Court addressed it), it has to be an unnecessary hardship, which means that only the special conditions of the property that distinguish it from other properties in the area. I have certainly seen variances granted, not just in Warner, where no such case was made, nor was it

discussed thoroughly. And that is my biggest concern. The Zoning Board has enough to do without someone wanting to do something that the zoning ordinance does not really contemplate. That is my concern, and I wanted to make that clear.”

George Pellettieri would also like to know if other communities have been investigated for all the issues tonight.

Ben Frost responded that each community is different, and some have use tables, some do not. With regards to commercial use, we did look at a variety of convenient stores, and came up with something that is different from some, but our own. The limitations on building sizes was intended to make it consistent to how it is addressed in other districts. Right now, commercial uses can be established by special exception in residential districts without a limitation on the building size, which is not what I think was intended. That is one of the things we were trying to correct with that zoning Amendment. Essential services is a common definition that you see from one town to another. Limitations on accessory dwellings is straight out of the statutes. If we are to engage in a comprehensive rewrite of the zoning ordinances, we should look at all the resources out there and is a many months if not many years long project.

Charlie Albano, the chair of the economic development committee, talked about how difficult it is to attract businesses that fit with the values of the town. He suggests that, moving forward, the board helps to define what the values are of the businesses we are trying to attract. For example, attracting a business that provides certain amount of jobs at a certain pay scale.

BOARD ACTION:

Motion: **John Dabuliewicz** motions to **withdraw** Amendment C: **Variance Notation** in Use Table.

Second: **Barbara Annis**

Decision: **Approved** – to Withdraw Amendment C: Variance Notation in Use Table from the warrant for town meeting in March. 6-1, with **Peter Anderson** dissenting.

AMENDMENT D: LIMITATIONS ON ACCESSORY DWELLINGS

Ben Frost explained that the legislature passed a law that requires municipalities to allow accessory dwellings in any zone in which single family homes are permitted. Last year the legislature passed an Amendment to that statute that does two things: 1) it specifically prohibits the future condominium conveyance of accessory

dwelling units unless the municipality chooses to allow it, and 2) it enables municipalities to prohibit accessory dwellings to be established in association with town-house style structures and/or manufactured housing.

The Planning board took up both of those sets and decided not to allow future condo conveyance of ADUs, but we did take up this one that would prohibit accessory dwelling units from being established in association with town houses, and there are not too many town houses in Warner. So that is the proposal.

Ben Frost has some misgiving about this Amendment, not in regards to town houses, but in regards to manufactured housing. There might be some situations where it might be appropriate for a manufactured housing unit to have a detached or attached accessory dwelling unit. By adopting this provision, the town would be saying that could not be done.

BOARD ACTION:

Motion: by **Barbara Annis** to list Amendment D: Limitation on **Accessory Dwellings** on the warrant for vote in March.

Second: **Ken Milender**

Decision: **Unanimous Decision** to **approve Limitations on Accessory Dwellings**

2. APPLICATION FOR CONCEPTUAL CONSULTATION

Applicant: Warden Hill Realty, LLC/ Joe Mendola

Property Owner: Alan Wagner, Jr.

Property Address: Schoodac Rd., A 15 acre parcel with 400 ft of frontage on Schoodac Rd.

Map: 11 Lot: 14-1

Description: Discussion of proposal to develop a manufactured housing park consistent with Article XIII of the Warner Zoning Ordinance. District R-3.

Joe Mendola presented a conception design of tiny houses, 8 feet wide and up to 40 feet long, for a total of 320 square feet on 13 individual sites on the lot. These houses would attract millennials to move to Warner with their tiny houses, with the convenience of hitching their tiny house to a trailer and driving away when they change jobs. The housing lot would also accommodate traditional mobile homes but that is not the reason that Mr. Mendola is proposing to build on this lot – he is interested in attracting 23-35 year olds to Warner. The houses are sustaining and have low environmental impact. They are flexible in terms of mobility, and it is a home that young people can afford. There are many jobs in our state that are not filled due to the high cost of housing. Tiny Houses will address that by making it affordable for young people to live in Warner without the expense of a larger house.

Joe would provide the pad site for the tiny houses to exist. If individuals would like Mr. Mendola to build the tiny house, he could do that. The tiny house owner will pay rent for the water and the sewer. Mr. Mendola said they have 2 bedrooms but are designed for one person. They would be 320 sf of living space.

For 13 units there would be 4 or 5 wells, and 4 or 5 septic systems, built within the HUD certification.

Ben Frost noted that this is a conceptual consultation. We are looking at concept ideas. The idea is for the board to give ideas. We will not go through engineering designs and the board is not going to approve anything. Ben is curious about the definition of manufactured housing in the zoning ordinance. What is the interplay between the town's ordinance, and the state's manufactured housing board? Ben has not considered tiny homes, as conceived here, to be consistent with manufactured housing as regulated by HUD.

Jennifer McCourt – McCourt Engineering presented on behalf of Mr. Mendola.

100 feet of frontage.

150 feet deep back from the road, 50 feet off side property lines, 30 feet between houses, with 2 parking spaces for each tiny house. The lots get steeper and wetter as you go to the top.

Jennifer presented two designs, one with open space and one with clusters of houses and they are aware that variances would be required for either design. Mr. Mendola would be looking for a variance from the site size of 15000 sf, and the dept of 150 feet, two rooms with a loft design.

The person who owns the house would not own the land or the septic. Those would be owned by Mr. Mendola.

Variance questions will be addressed by the ZBA.

John Dabuliewicz noted that this could also have single wide mobile homes.

Joe Mendola would like to keep it in the realm of tiny homes. In the regulation, a manufactured home needs to be transportable, either 320 sf of living space, or on a chassis that is 8x40 ft to allow it to go on a public roads. Somewhere between 275 and 400 sf is the realm of tiny home living space.

James Gaffney said that he has heard of people doing this and they turn into AirBnB, and not getting rented out as they thought they would be.

Peter Anderson asked if Joe would be involved with the sale of the homes. Also asked what would be the monthly rent. **Ken Milender** asked about water supply.

Don Hall said that we have entered a new realm. He wanted to caution the Planning Board that this is slippery slope and we want to be sure we get it right.

Ben Frost preferred the clustered design, and noted that there are many things to look at: hammer head drive, intent of the homes, how state standards apply, and variances that would be required. Also asked about the difference in disturbed land between the cluster and the open space land. Anyone can use these – not just for millennials.

Regarding the hammer-head driveway and road- **Joe Mendola** said this would be a town road, so built to town specifications, and the designs have provided for the 60ft ROW. **Ben Frost** said that if it is in the subdivision regulation– it is PB. If it is in Zoning ordinance, it is a ZBA

Michael Amaral, a long time resident, member of the Conservation Commission, asked that the Planning Board consider the steepness and other engineering restraints when considering this type of development.

Ben Frost encouraged anyone who has a question to please contact Joe **Mendola**.

3. FIRESTATION PRESENTATION by Anthony Mento and Kevin Leonard , of Sheerr McCrystal Palson Architecture Inc.

Anthony and Kevin described how the property slopes from front to back, and how it drains. One of the entrances is for emergency vehicles only. Vehicles will enter and exit on the West Main Street entrance. There are two entrances and a 50 foot wide curb cut. There will be four parking spaces in back, and forty spaces in gravel lot for volunteers and xs parking. Trees will be planted on two property lines. Lighting will go on when there is a call with multiple controls. They are trying to minimize the number of lights and amount of light.

Emergency only coming in one entrance. The sewer will tie into split rock road sewer. There will be a generator for when power is out. One tank for heat, one for the generator.

Some trees will be removed. A decontamination room will drain into 1500 gallon holding tank. Pumped by Clean Harbors or a similar company, there are accommodations for washing trucks inside. They want to test batches of a full tank to see if it is permittable to pump into a sewer. If it passes the test, then it gets dumped. If it does not pass, then it is removed by Clean Harbors. A pole will be 15 feet high.

There is a depression that is lower than the neighbor's property. There is not a lot of runoff that occurs.

During a large rain event, water flows off the site, down the road to where the state put in wells.

The station will be above the water table. The way the system works is in storms when heavy rainfall backs up into the depression which is only 5 feet deep. As the storm clears, water infiltrates the ground,

There is an abutter who had concerns and that abutter has been attending meeting. Kimberley Edelmann reaches out to the community and keeps everyone informed.

Anthony Mento will clarify a non-disturbance area marked in the map key.

Ken Milender asked is this a cut or a fill site, noting that the back yard is a couple of feet lower than the street level, and asked about storm water system, open basin as an overflow and inquired if these were cost –saving solutions.

The presenters noted that this is a budget-conscious project.

Catch basin and Man Holes: Manholes will be located on either end of the catch basin with access by jet vacuum for cleaning which will be cleaned by a vendor. If you do routine maintenance, then this task is minimal.

The Firestation committee has selected colors. Cement board siding will be the primary siding structure with 40 year asphalt shingled roof which is maintenance free. The building lighting are little LEDs. There are 5 doors on

the front, and 5 doors in the rear. The reasoning for the form/shape came from meeting with the community who wanted to have low impact on the community.

There is no traffic light being installed, due to the good line of site. If a traffic light is required, estimated cost is 35-40k.

Currently there is a little utility pole on the peninsula. Fire Chief would like that removed, and the engineers agree. The cost to do that would add more to the project. Members of the committee have talked to TDS to see if they can move it while working on the lines. The pole is owned by TDS.

Snow load is being addressed by the structural engineer, and the roof is over-engineered. Anthony will get that information for the planning board to be sure it can handle the snow load. **Don Hall** noted that a flat roof concept has always been an issue in this area.

Exterior wall is made of ICF, rigid insulation, reinforced concrete with rebar, and energy efficient.

There are no columns and the space is free and clear.

There was discussion of air exchange, CO sensors that will turn on once the sensor notices a truck is running; the garage door will automatically open and fans will turn on.

It is customary to have two vehicles traveling together: a water tanker and a fire engine.

Ben Frost said that, technically speaking, this is what is required for a presentation to the board for governmental uses of property. This is the town's application to itself. We chose this evening because it fits with an anticipated building permit being pulled, provided the voters say "yes." Ben Frost expressed appreciation to Anthony Mento and Kevin Leonard for the quality of the plans.

Kimberley Edelmann informed the board that the bottom line, as of right now, is 2.8 million and they will know by Feb 22, the public hearing.

Ben Frost said that, barring a dramatic change, there are no further requirements for anyone to make a presentation to the board.

• COMMUNICATIONS AND MISCELLANEOUS

Planning board members, **Ken Milender, Peter Anderson, James Gaffney**, have terms expiring this year. Peter Anderson is undecided. **Ken Milender** will step down. Diane will pass this information on to Mary Whalen.

Ben Frost asked if Ken could help find a replacement with similar experience as Ken bring a lot to the Planning Board that will be sorely missed.

Ben Frost asked if anyone had an objection to him meeting with Mark Wixted, Bohler Engineering, to discuss architectural design of McDonalds. The board did not object.

- **PUBLIC COMMENT**
- **ADJOURN at 9:16pm**

PLANNING BOARD MEETINGS WILL END AT 10:00 P.M.

CASES REMAINING ON THE AGENDA WILL BE HEARD FIRST AT THE NEXT SCHEDULED MONTHLY MEETING

Approved