

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

January 7, 2019

7:00 PM

**WARNER TOWN HALL - LOWER MEETING ROOM
5 East Main Street, Warner, NH 03278**

- **OPEN MEETING**
- **ROLL CALL**

Andy Bodnarik Peter Anderson Clyde Carson (Representative of Board of Selectmen)
Ben Frost (Chair) Don Hall (Vice Chair) Ben Inman

James Gaffney (arrived at 7:12pm)

- **APPROVAL OF MINUTES**

November 12, 2018 minutes. Edits by Andy Bodnarik. **MOTION** to approve, as amended, by **Peter Anderson**
Second by **Don Hall**.
Approved: 6-0

James Gaffney arrived at 7:12pm.

December 3, 2018 minutes. Edits submitted by **Andy Bodnarik**.
MOTION to approve minutes, as amended, by **Ben Inman**.
Second by **Clyde Carson**.
Approved: 7-0

December 17, 2018 minutes. **MOTION** to approve minutes, as amended, by **Don Hall**.
Second by **Peter Anderson**.
Approved 7-0

- **NEW BUSINESS**

Ben Frost opened the public hearing on Zoning Ordinances.

Recognizing that there are many things we need to do.

The following six terms, currently undefined in the Zoning Ordinance, are being proposed to appear as a Warrant Article at the March town meeting:

- “Abutter” is as defined in RSA 672:3, as amended.
Recommend to town meeting or reject
- “Agriculture” is as defined in RSA 21:34-a, as amended.
Recommend to town meeting or reject
- “Automotive repair, automobile service station or garage” means a repair shop, service station or garage where automobiles are repaired or serviced by auto mechanics and technicians.
Recommend to town meeting or reject
- “Miscellaneous business repair services” means a building or facility where equipment used by a business is repaired or serviced.
Recommend to town meeting or reject
- “Person” is as defined in RSA 21:9, as amended.
Recommend to town meeting or reject
- “Subdivision” is as defined in RSA 672:14, as amended.
Recommend to town meeting or reject

Warner resident **Ed Mical** asked if the entire contents could be posted or available for a resident to read as most people will not know what is in an RSA. **Ben Frost** responded that the announcement is listed on the website and on the town hall bulletin board. We will not include the entire statutory definition in the zoning ordinance. However, the full definitions will be available in a glossary of terms which will not be part of the Zoning Ordinance. This is a work-around solution.

Chairman **Ben Frost** Closed the Public Hearing.

Ben Frost posed two questions to the board: 1) is there any concern for any of these? 2) are you ready for a motion to approve these for submission to the Town Clerk for the annual town meeting in March.

James Gaffney makes a **MOTION to approve** the six items for submission to the Town Clerk for the annual town meeting in March.

Clyde Carson seconds.

Clyde Carson: Will the warrant give some meat to the purpose of why we are doing this?

Ben Frost: The warrant itself will not, because the amount we can put in the warrant is limited, by statute. We could have an explanatory guide, but not on the warrant.

Clyde Carson : Sometimes you get into the voting booth and people have no idea what they are voting on.

Andy Bodnarik : One of the reasons we have this is because many of the definitions in the RSA are exceedingly long. We did not want to get into the position of defining terms on top of terms.

Ben Frost calls for a vote on the motion.

Approved 7-0.

This means we will **not** have to hold a public hearing on January 28.

Andy Bodnarik will put together a handout for the town meeting.

1. APPLICATION FOR SITE PLAN REVIEW

Applicant: Technical Gas Products, Inc.

Property Owner: Charlebois Holdings, Inc.

Agent: Matthew Squance

Street address of property: 652 Route 103 East, Warner, NH

Map 3, Lot 28, Zoning District C-1

Description: Proposed use is for an office and warehouse for sale and distribution of medical gasses and related equipment.

Speaking on behalf of Technical Gas – Steve Dimarzio and Matthew Squance(Director).

Ben Frost: This is an amendment to a previous hearing. This is where the former bus terminal was located.

We have some limited material because this is an amendment to an existing site plan. We have a map showing the orientation of the tank. We also have in the file from DOT letting us know that they need a revision to the existing driveway, and communication from the fire department.

Steven Dimarzio reported that they are primarily distributing to hospitals and nursing homes. It gets piped in to vans, and then piped into hospitals. There will be no retail on site. The company is registered with MediCare.

We submitted a drawing that was signed off by Sean Twomey.

Ben Frost opened the Public Hearing:

Ben Frost: One of the questions has been hours of operation. What do you see as your hours of operation?

Steve Demarzio: Monday Through Friday, 8am - 4:30pm
 7am – 6:30pm operating personnel on site.
 Closed on weekends and 7 major holidays per year.

Motion by Peter Anderson to accept the documents as an amendment to the site plan, and to accept jurisdiction over the plan.

Second by Andy Bodnarik.

Approved, 7-0

Andy Bodnarik asked how does this fit into the Use Table for the C-1 district, and has questions about the driveway permit.

Audience Questions:

Holly Carlson, and Tony, abutters, asked about hours of operation because there are trucks that are in the lot before 7am, and shining their headlights into her home. They also asked about the number of vehicles on the premises at any one time. There is a vehicle at 5:30am that parks, with headlights shining into their house, and the person goes into the building. Holly ask that lights be turned off if the van is running.

Matthew and Steve responded that they have sometimes noticed trucks pull off the highway and park in the lot to take a rest. Technical gas will install a gate or chain that closes at end of day. Also, they are going to see if there is a way to put an interrupter switch on that. If you are coming later, it is big enough that you don't have to back up, you can leave the truck where it is without having to jockey around. The number of vehicles currently owned is 9. There will be between 5 and 7 vehicles left on the premises. Two vans go home with employees, and 2-3 will remain in the building, and you may see up to 7 in the parking lot.

Tony asked what is the consequence if they have 22 vehicles, as they experienced with the bus company? There were supposed to only be 6-8 buses, and the town did nothing. Tony and Holly would like to know what is put in place to prevent the new owners from exceeding the number of vehicles.

Ben Frost: The board can establish a maximum at any time, a different maximum for overnight. If the applicant wanted to increase beyond that, they would have to come back here.

James Gaffney: In the past, when there was an issue, you mentioned that you tried to work with the town to get it resolved. What office did you talk to?

Holly: The Town Administrators' office, Laura at the time. We sent letters, they talked about the noise ordinance.

Tony: The previous owners set forth what they wanted (6-8 buses), and then did what they pleased. There were no limits.

Ben Frost: There was discussion of these issues in the Planning Board minutes of the number of vehicles, but not a condition of approval.

Ed Mical: I am putting my emergency management hat on. As a facility that could be under the Code of Federal Regulation, I would like see an emergency plan.

Matthew: Typically, we work with the fire department, what the tank looks like, where the safety releases are located. We will run through with the fire department, and the emergency management.

Holly: Do you see anything changing with regards to signs or lighting?

Matthew: There will be no sign on the street. Just a sign on the door, but nothing with the lighting. We would prefer to have less lighting so that people do not pull off the highway to rest.

Ed Mical: My second question is I think the information they provided about Sean Toomey, I think is from the State Fire Marshall, and not anything to do with the local fire department.

Don Hall: We asked the local fire department. That was our first mode of attacking this. We asked to have a review and approval from the fire department. That is what I am still waiting to see. We asked them to initiate this process. We wanted to hear back as to how this operation was going to function.

Barb Marty: (Resident) Is there consideration given to screening, plantings or a fence, so that the lights would not be an issue for the neighbors? Could that be a condition?

Ben Frost – It is possible, but considering that this is an amendment to an existing proposal, our scope is somewhat limited.

Steve: The driveway is open so you can get into the area. We could put a fence. I don't know how high it could be. It is a large piece of property.

Ben Frost: Given the orientation of the driveway, and the nature of the property, it might be wise to think about orienting your parking differently, and asking your drivers to consider the neighbors when they are driving.

Steve agrees and said they will ask drivers to turn of their lights once they are on the property.

Ben frost – Do you need to maintain exterior lights for safety?

Steve : No

Joe Mendola: Abutter. I assume the tank is outside, and not inside. Where is it in relation to where you come in?

Matthew: If you have a driveway coming off 103, it is behind it. It is on a tank pad.

Joe Mendola: Don't you usually have a site plan?

Ben Frost – We don't have an existing formal site plan, so there was nothing to specifically modify. What we have here is a significant improvement.

Joe Mendola – What is the situation, if someone is doing what they are doing, and had a cigarette?

Matthew – Oxygen will not burn on its own; it makes things burn. It is not an explosive. If you opened everything up, the flame would grow taller, but nothing else would happen. It has to be on concrete so it does not soak into the ground. It is very cold. There is no danger that it will burn. It is non-reactive. If you stick your tongue on the pipe, it will stick. It is non-reactive, and it is not an explosive. The danger is that it is cold.

Ben Frost: Close public Hearing.

Ben Frost reiterated the list of **CONDITIONS:**

OPEN HOURS OF OPERATION:
Monday through Friday, 8am - 4:30pm
7am – 6:30pm operating personnel on site.

9 Trucks now, with a maximum of 12 trucks in operation at any one time.
Maximum vehicles outside overnight is up to 7.

No additional exterior lights.

Exterior lights not to be used outside hours of daily operations. No lights overnight.

No signage other than a decal on the door.

Emergency plan to be worked out with the Fire Department and the Emergency Management Director, with something in writing from both submitted to the board.

NH DOT – Copy of revised driveway permit updated. (will be done tomorrow.)

Chain or otherwise secure the property, outside of hours of operation.

Truck operation on the property will be done so that it minimizes impact abutting residential properties.

James Gaffney – the plan that was submitted includes language that a chain link fence will be added around the tank itself, with a padlock latch. I am thinking of mischief. Is there an intention to keep that locked?

Matthew Squance– Yes.

Andy Bodnarik – I am curious about how this fits into the ordinance, the Use Table. Does it fit under wholesale transportation, section 9?

Ben Frost – It is essentially a wholesale operation. I think that is the closest we can come. It is a reasonable fit.

Andy Bodnarik – The other question I have is in the documentation, there is talk about a driveway permit. I realize the applicants are in contact with NHDOT.

Matthew Squance – I spoke to them directly, you have to amend the driveway. We will complete the form and drop off tomorrow.

James Gaffney - Is there value in asking that the Fire Department be provided, annually, a point of contact to reach out in an emergency?

Matthew – We have a 24 hr phone number. We can provide an emergency contact number as well.

Ben Frost – the fire department probably does a regular if not annual, contact with businesses.

James Gaffney – Do you have an alarm?

Steve – No, and there are no outside speakers to communicate with drivers.

Ben Frost – Is there anything else that would be considered conditions of approval?

Motion by Peter Anderson to approve with conditions. **Second by James Gaffney.**

Approved 7-0.

2. APPLICATION FOR CONCEPTUAL CONSULTATION

Applicant: Peter Smith

Property Owners: Peter Smith and Denise Smith

Street address of property: 89 Mink Hill Lane, Warner, NH

Map 9, Lot 11, Zoning District OC-1

Description: Change use from conducting auctions (granted, by variance, 5/11/11) to renting property for events along with reestablishing tent rental company on-site and other locations (ran at 89 Mink Lane 1/1999 – 6/2009) on much smaller scale as tents would be needed for events at location.

Peter Smith: I stopped doing auctions in 2013, to transform my barn. People used it in the past, mostly friends and family. People suggested that he rent it. We would like to do that.

Ben Frost: We have the previous application with the Zoning Board of Adjustment, from 2011. Really what you are proposing is to have a tent on-site for people to use for functions.

Peter Smith: The barn can only accommodate so many people so that we extend by adding a tent. When we did the auctions, we did the same thing. The tent was outside. There is ample parking and I have never had an issue. The tent on the end is to hold people. If there are only 60 people, then they can sit in the barn. When I let someone else borrow it, I want it to be OK. If I want to charge someone, I would like to be able to do that.

Ben Frost: It had been previously classified in the Use Table, and I assume it has not changed. What we have is under Retail and Services 2, the language in 2011 was identical. The use being proposed was retail establishment. Not sure how that fits there.

Andy Bodnarik : I am looking at the same Use Table, I don't understand why that is not covered under 19-a. in the Use Table. We have a notice of decision and it talks to a different section of the Use Table.

Ben Frost: Regardless of what section was being cited for a variance, a variance was granted for the auction use in 2011. The question I have for the board is what is being proposed now, is that sufficiently similar to what the Zoning Board of Adjustment granted in 2011 – group gatherings of people? It was auctions, and now weddings.

Barb Marty: (Member of the Zoning Board of Adjustment) – Because of the change that was made last year at election, if a use goes out of use for 2 years, then the Variance or Special exception needs to be reapplied for. It is considered an abandoned use.

Ben Frost: Is that only for prospectively to Special Exception and Variance that are granted after the date of the change, or does it apply to ones previously?

Barb Marty: I believe it was retroactive.

Ben Frost: Time Limits on page 35 of the zoning ordinance. Article XVII.

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 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 at least two years, then the Special Exception or Variance cannot be*

reestablished without a new application and approval by the Board. [Amended March 2017]

That is a pretty close tracking of the statutory provisions. Then my question is, with particular regard to b., given that the provision was adopted in March 17, does it apply going forward, or to variances and special exceptions granted prior to that date?

Barb Marty: My understanding at the time, is that it would apply to anything that has been abandoned for 2 years. Even if it was abandoned in 1946, or 2013. Once the use or construction was restarted, it had to be a variance to a special exception for which you had to reapply?

Don Hall: What did you apply for in 2010? Did you apply for a home occupancy limit?

Peter Smith: It was for auctions. I did one there thinking it was OK, then you guys said I needed to get something, so I did.

Clyde Carson: Prior to this adoption in 2017, was there any language in the ordinance that there was an issue of abandonment, or once you got the variance, it was assumed it would remain in effect.

Ben Frost: That is a good question. We may not be able to answer that tonight. We don't know if there was something in that section prior to March 2017.

James Gaffney: Hours of operation?

Peter Smith: When I did the auctions, it was not more than 26 per year. Maybe 2 per month, on Saturdays. Mostly weddings and parties.

James Gaffney: It mentions that you have 32 acres. In terms of orientation with neighbors?

Peter Smith: You cannot see anyone anywhere.

Andy Bodnarik: The application mentions other locations.

Peter Smith: If I buy tents, I may start my tent company back up. May just sell to someone else who needs a tent, as I did for 10 years.

Peter Anderson: If you have an auction scheduled, and a wedding request comes in.

Peter Smith: I am no longer doing auctions.

Ben Frost: Is the variance still good on the property? Given that it has not been used, recently. That calls for us to understand that section of the zoning ordinance. I am recalling that discussion, but think we need to go back to the minutes.

Peter Smith: If it is not in writing then it does not go back, then I don't know how you can even ask. If I need to put in a new variance, then I will.

Ben Frost – You might have a different option, the changes to the Zoning Ordinance since that time, under retail and services, permitted by Special Exception, which is easier to get than a Variance. Other

amusement and recreation services event venue and function services, which sounds exactly what you are talking about, both onsite and supplying tents for use in other places.

Andy Bodnarik asks is this even a change in use at all?

Ben Frost: we can research the interpretation. I would suggest that you apply for a Special Exception under 19, the Zone is an OC-1.

Board agreed that both 19 and 19-a. are outdoors.

Ben Frost: I am looking at 19, not 19-a.

Andy Bodnarik: If it is outdoor, then it requires a Special Exception.

Ben Frost: The way I read this is 19-a, in a Venn diagram, it is a subsection of 19.

James Gaffney : I think you could make the case that this is 19. That it is just a special exception.

Ben Frost: You have two options: 1) you can file a special exception under 19 of the retail and services portion, or 2) you can wait until we do the research about abandonment. That is a question for the board.

Peter Smith: I don't want to be stuck. I am stuck in a spot where I am not allowed to do what I want to do.

Ben Frost: If you are characterizing it as a change of use, then I think it is a change of use.

James Gaffney: If we are going to argue that the variance has been abandoned, then there is no change of use because there is none.

Ben Frost: So it is 19, under retail and services in the Zoning Ordinance, subject to the Zoning Board of Adjustment granting a Special Exception.

**3. Braeside Apartment Sign – Sign is already in place
201 Route 103 East. Zoning District R-2.**

Chris McMann, Alan Mason, Keystone management.

We took down the signs that the previous owner had, they are a little bit bigger, the old ones were 5x5, and the new ones are 4 foot by almost 8. The other question was the lights. I think it said in the letter about the lights. The lights were not put there to illuminate the sign, they were put there all around the barn for safety. They are all around so that people can walk around the building to dispose of their trash. If you go around the backside, there are 5 lights not to light the sign, but to light the property. They are drop-down lights, bell shaped. Over the barn, there happened to be a light over the sign.

Ben Frost: Any questions from the board?

James Gaffney: The lights were pre-existing?

Chris McMann: We have that sign on both sides of the barn. In the same place as the original signs.

Don Hall: What we have says one sign, but you have more than one. So this is false information from the Administrator's office.

Chris McMann: We did not complete any forms, this was a letter that was sent to us from the Administrator's office.

Ben Frost: Reading from the Zoning Ordinance, page 18. *"In the C1 district, (which this is not), signs shall be with permitted with a combined total maximum area of not more than sixty-four (64) square feet in surface and/or image area per premises."*

James Gaffney: Two pre-existing non-conforming signs is what we have. Number 11, in Article XII of the Zoning ordinance says, *"On-site signs associated with a legal non-conforming use shall be maintained and may be replaced in kind if necessary. Non-conforming signs shall not be expanded."*

Ben Frost – What I take that to mean is that you need a Variance to expand the size of the sign. You will apply to the **Zoning Board of Adjustment** to increase the size of the signs.

- **COMMUNICATION AND MISCELLANEOUS**

Planning Board website requirements discussion

Request from Economic Development Advisory (EDAC). What would the planning board like on the new website?

James Gaffney – Compatibility with all platforms.

Ben Frost: What is the timeline?

Clyde Carson: The survey is out. The hope is that we will be looking at first half of this year for requirements.

Ben Frost: Diane will recirculate a link to the website and please send your feedback to her.

Ben Inman: I encourage everyone to look at other towns, Bedford, Bow, Hopkinton.

Ben Frost – We have communication from Bret Ingold. On behalf of the EDAC, he is asking if the Planning Board has any concerns about the painting of a mural on the side of the former IGA building, that faces Kearsarge Mountain Road extension. It is a blank concrete wall on the west side of the Local.

James Gaffney: Does that constitute a sign?

Ben Frost: Bret Says that the idea, in its infancy, is to create a mural, it would not advertise anything, therefore it would not be a sign.

James Gaffney: They can support all kinds of a agendas.

Don Hall: I was at the meeting, and a discussion of whether the owner would agree to it took place.

Ben Frost: If it is a commercial sign then it is subject to some level of regulation. If it is apolitical sign, then we are running up against the First Amendment.

James Gaffney: We have something in the ordinance that outlines size and duration. I think the side of the building will blow that out of the water. We don't have to support it.

Ben Frost : I am not suggesting that we express support, but asking if the board has any concerns.

James Gaffney: It is in some ways no different than the sign on the crosswalk.

I have concerns: 1) not in any way advertise commercial venture, and, 2) not make a political statement.

Don Hall: It becomes a tool from the Economic Development Committee to advertise Warner. It is just a way to welcome people to the community.

Ben Frost: Does the board want to comment on this?

Peter Anderson: Yes. I think Bret Ingold deserves a response.

Ben Frost: I can say that we did discuss it, and I can give my personal view, but not the board's view, unless you want to make a motion.

Peter Anderson: I think common courtesy requires a comment. We have an obligation to another organization to this town, working for the same purpose we are, to attract people, make them feel welcome. Out of basic respect, they deserve a response.

Andy Bodnarik: We could invite them to a meeting, is one possibility and listen to them.

James Gaffney: What is our statutory authority? We have none.

Ben Frost: If it is a commercial sign, then we do have some level of authority over it as an amendment to the site plan for that property. It is a B-1 district.

Don Hall: In the minutes of our last meeting, I made a suggestion that the Economic Development Advisory Committee talk to us, via invitation from us. Does this warrant an invitation? I say it does.

The board agrees to invite the Economic Development Advisory Committee to a future meeting of February 4. Don Hall will invite Charlie Albano.

- **REPORTS**

1. **Board of Selectmen - Clyde Carson.**

I sent an email that the bill to name the roundabout after Barbara Annis will be on the legislative agenda in a couple of months. I think it would be appropriate for the Planning Board to send a letter, in addition to the Select Board. I have not seen that the bill yet. It will go to the Public Works and Highway Department.

Ben Frost – I would be happy to deliver a letter, from the Planning Board, in support of the legislature to name the roundabout after Barbara Annis.

Motion to Authorize Chair, **Ben Frost**, to write a letter of support, by **Don Hall**.
Second by **Ben Inman**
Approved 7-0.

Ben Frost will write the letter and will try to attend the meeting.

Clyde Carson – I have proposed a warrant article that would be renewable energy related. We currently have solar and wind exception of 35k that are installed on property in the town. It is renewable energy related.

We would remove the 35k cap as a way of “incentivizing” other larger renewable energy in town. As long as it is used for the property, we will see where it goes. It is restricted to the size and expected use on the site. The system would be sized to the expected use on that site. Net metered.

2. Regional Planning Commission - **Ben Inman**. Excited to attend the meeting on Thursday, to learn about the housing market update.

3. Economic Development Advisory Committee – **Clyde Carson**. Did not make the last meeting but still working on the website, and the intention is to go forward with a tourism brochure funded to put in rest areas throughout the state.

James Gaffney – I would like to pose a question to Clyde Carson and the board; I am reflecting back on our experiences with the state liquor commission telling us that they were going to build a liquor store in Warner, and our experience with signage and lighting. I would like to see a bill submitted that forces the liquor commission to comply with local planning and zoning regulations. Is that something you would consider submitting on behalf of the Planning Board?

Clyde Carson – whether it could be retroactively would be a question, and secondly, we would want to research to see if it is already the case.

James Gaffney: We could establish lighting guidelines. Sometimes it is like a beacon.

Clyde Carson: Short of legislation, I think it just might be an inquiry to the commission.

James Gaffney: We are talking about something that can impact a town, and the local community has no say. I think it is wrong, and I don't think that was the intention of the state when they established the Liquor Commission. You may not be able to fix things retroactively but you may be able to stop the bleeding. And when the Liquor Commission decides to do another one, then the town would have a say.

Ben Frost: 1) I interpret from James Gaffney that the Planning Board send a letter to the Liquor Commission, asking them to specifically limit the hours of illumination of the sign (I think they said one hour after closing.) And 2) preparation of legislation that would be subject to new signage provision.

James Gaffney: Why would we not want local purview? Maybe a limited ask is the first step.

Ben Frost: I think the signage is the most offensive part. Other than the signs, everything else was subject to this board's authority, until the Liquor Commissions took control of the property. When it was RMD, we had some control.

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James Gaffney: The flip side of that is that future signage changes are subject to local planning board jurisdiction. I am not proposing that the entire area be dark at night, but it should not be Pat's Peak.

Clyde Carson: I agree with that. Based on a discussion I had with the Department of Transportation Commissioner, we have more authority over the sign than we thought. We should clarify for future use.

- **PUBLIC COMMENT**
- **ADJOURN 8:58pm.**

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