

# TOWN OF WARNER – ZONING BOARD OF ADJUSTMENT

## Meeting Minutes

March 16, 2016 7:00 PM

### Warner Town Hall, Lower Level

**Members Present: Chairwoman Janice Loz, Rick Davies, Gordon Nolen, Andy Bodnarik, Alternates Howard Kirchner, Corey Giroux.**

**Land Use Secretary: Lois Lord**

**Members Absent: Alternate Beverley Howe**

#### **1. OPEN MEETING**

Chairwoman Loz opened the meeting at 7:02 p.m.

#### **2. ROLL CALL**

Roll call was taken with one member absent and six members present. Chairwoman Loz asked Howard to sit in as a voting member this evening and noted that Kimberley Edelmann had not been reappointed to the board.

#### **3. APPROVAL OF MEETING MINUTES**

Chairwoman Loz brought forth the Site Walk Meeting Minutes of February 10, 2016 for approval. Rick Davies noted one change. MOTION to approve the minutes as edited was made by Rick Davies, seconded by Andrew Bodnarik. A voice vote was taken with a unanimous yes.

Chairwoman Loz brought forth the evening Meeting Minutes of February 10, 2016 for approval. Howard Kirchner and Andrew Bodnarik noted some edits. MOTION to approve the minutes as edited was made by Rick Davies, seconded by Howard Kirchner. A voice vote was taken with a unanimous yes.

#### **4. CONTINUATION OF REHEARING FROM FEBRUARY 10, 2016**

**Rehearing of Case: ZBA 2015-03**

**Property Owners/Applicants: Melissa and Michael Biagotti**

**Property Location: 393 Pumpkin Hill Road, Map 15 Lot 15, Zoning District R-3**

**Special Exception: Zoning Ordinance Article VII, Provision B, use Table Retail and Services No. 3**

#### **Board Discussion and Decision**

Rick Davies mentioned that with the discovery of the 1976 Special Exception, the Planning Board had the Land Use Office do research to see if there were additional cases on the microfilm in the library. There is one case that may be connected to this site, probably with no specific consequences to tonight's case, however Case No. 18 on May 24, 1984 before the Zoning Board of Adjustment reads as follows:

*You are hereby notified that the request of Virginia B. Hicks for a Special Exception as provided by Article VII Section B has been granted as specified in the letter from Mr. Campbell.*

Rick noted the letter from Mr. Campbell had not been found and we don't know what piece of land the special exception was for. He said it was recommended by town counsel to put the information out there and the Planning Board would be sending a letter to the Biagottis making them aware of it.

Chairwoman Loz suggested the board move on to the motion that Rick had drafted. Rick stated that technically it's not a motion but a draft document and recommended it be discussed. Andy asked about the case that Rick had just cited and was it a case before the Planning Board. Rick said the information was not in the files in the Land Use Office but was found in the library microfilm files and clarified that it was for a Special Exception. Corey asked if we knew if the 1984 document was implicating the lot we are dealing with in the current case and was told we don't know, it's the same owner and we are sharing the information as recommended by town counsel.

The board proceeded to discussion of Ricks draft document. He said his composition was suggested by the OEPs Zoning Board of Adjustment Handbook as a draft of denial. As was pointed out by Andy at the last meeting they don't need to include all of the facts they have found, just pertinent ones and some background as to the reasoning which is what he has done.

Gordon Nolen stated he feels the draft covers all of the pertinent points including all of the contention that was voiced by the public.

Andy had a few questions regarding the wording inconsistencies and were we talking about an appeal or an application. Rick replied that is a technical term that he feels doesn't get used correctly and that all of the RSAs and other regulatory documents refer to the appellant coming to appeal to the board for, in this case a Special Exception. Andy's other question was regarding the term "expanded use" and suggested it be used for both facts one and two that are cited for the reasons for denial.

Rick noted that if the board votes on this document it should first be read out loud to which Chairwoman Loz was in agreement. The board continued discussion of the draft document with several suggested grammatical and minor wording changes noted. They discussed that the first part of the document is stating the facts for the denial and the second part is the reasoning for denial.

Chairwoman Loz mentioned the Site Walk Visit portion of the document and the statement that regards the function room and kitchen being in disrepair and not appearing to have been used for 25-30 years. She stated she didn't think that was a viable reason to deny, feels that is subjective opinion and that whether or not the property is currently ready to be used as a facility should not be a concern to the board.

Rick made the point that it hasn't been running per the 1976 Special Exception and the current request is to expand the use. It's a little bit of building up to the number seven in the draft Notice of Decision regarding the increased activity, noise and traffic. Janice asked if it hasn't been running is that a legal reason to deny the current request? Rick replied the board at last meeting agreed that the 1976 decision was still valid so in theory the interpretation could be that it can be run now per that decision.

Andy stated that maybe less is more and the first sentence regarding the condition of the facilities may be more opinion than fact. It was clarified he is talking about paragraph five and he suggested keeping it to the fact the facility has not been used in 25-30 years and keeping the description of the barn. This was discussed and it was decided to reword this section as per Andy's suggestion with an additional change by Rick.

A few more grammatical and wording changes were discussed and agreed upon and the final document was read as a MOTION by Rick Davies as follows:

**Per request at the last meeting, the following is a DRAFT suggesting possible wording for a Notice of Decision.**

**Suggested composition was obtained from the November 2015 OEP Zoning Board of Adjustment Handbook, pages III-13 to III-20, plus suggested form templates C-11 & C-13.**

**Notice of Decision**

**Date of Decision:** March 16, 2016

**Case:** ZBA 2015-03

**Property Location:** Tax Map 15, Lot 15; 393 Pumpkin Hill Road, Warner NH 03278

You are hereby Notified the appeal of Melissa and Michael Biagotti (Applicant/Property Owner) for a Special Exception regarding Warner Zoning Ordinance Article VII Section B for an eating and drinking place to host professionally catered events such as wedding receptions, reunions and other gatherings, has been **DENIED**, by a \_\_\_\_ vote of the Zoning Board of Adjustment (ZBA) following a Public Hearing, for the reasons/facts listed below:

1. The Board finds the expanded use is considered undesirable to the public convenience.
2. The Board finds the expanded use will impair the integrity and character of the district.

**Reasons/Facts Supporting the Denial:**

1. There was a public hearing started on January 13, 2016 and continued and ended on February 10, 2016. There was a ZBA site visit on February 10, 2016.
2. In a November 4, 1976 ZBA decision granting a Special Exception to Arthur Hicks for a function and dining facility (a Special Exception runs with the land), this use was restricted to be within the confines of the then "present residential structure". The barn was not included in 1976 decision. Site Plan

*Review Regulations provisions were not adopted by the Town until 1983 and no plan of the facility was found on file. This decision document was not initially on file in the Land Use Office but was subsequently discovered archived in the Pillsbury Free Library after the January 13, 2016 ZBA meeting.*

3. *The applicant wants to include events in the barn which would greatly increase the available facility area and capacity.*
4. *The requested "Events" is not included as allowed by Special Exception in the referenced Zoning Ordinance Table 1 - Use Regulations, Retail and Services, item 3 (Eating and Drinking place not including drive-in establishment).*
5. *On a February 10, 2016 publicly noticed Site Walk/Visit, the insides of the barn were rough and not finished in a manner to indicate there was use of it as part of the function and dining facility as part of the 1976 decision. There had been testimony the facility had not been used in 25 to 30 years.*
6. *Map 15 Lot 15 has been subdivided into 5 lots since the initial 1976 ZBA decision. New houses have been built on these lots at a much closer distance than would have been the case for abutters in 1976. Some abutter houses are visible from the area of the residence. This in essence has created a smaller area for Use initially granted in 1976.*
7. *The house and barn were observed by the Board as being typical rural/country design and layout. Abutters testifying at the Public Hearing or by letter were concerned with increased activity, increased noise, traffic issues, and general annoyance, as well as a concern as to the value of their properties, and the ZBA agrees.*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Janice Loz, Chairperson, Warner Zoning Board of Adjustment*

**Note:** *The New Hampshire RSA 677 provides that the Board of Selectmen, any party to the action, or any person directly affected has a right to appeal this decision within 30 days after the date of decision. This notice has been placed on file and made available for the public inspection in the records of the ZBA.*

*cc: Applicant, Planning Board, Board of Selectmen, Building Department, Town Clerk, and Assessing Clerk.*

Andy Bodnarik moved the Notice of Decision be approved as read by Rick Davies, Gordon Nolen seconded the motion.

Chairwoman Loz spoke on her thoughts regarding this decision. She stated she believes the board adequately determined the Special Exception did cover this use and by talking to legal counsel did decide the events use fit within the Use Table. Janice said she doesn't believe that with the first decision the board erred in any way, and in listening to the testimony from the applicant and abutters, they both wanted the same things. She continued she felt the applicant was concerned with making the business fit into the neighborhood well, was aware of the noise concerns and wanted to make it pleasant and not offensive to anyone.

Chairwoman Loz stated because this property was used in this manner in the past and given the rate of inflation and increase in taxes, to expand the use of the property to sixty more people is reasonable to generate income for the property. Janice noted weddings and reunions are usually held on weekends, Friday and Saturdays mostly and the traffic would increase fifteen to twenty minutes before and after an event and wouldn't occur during commuter or school bus traffic. Chairwoman Loz mentioned smaller events the applicant wished to hold which would not occur during heavy traffic times either so she felt that was a reasonable request.

Janice said she did grapple with that because what the abutters has to say was important to her and she does think the closest abutters driveway egresses on a different road behind this property. She said she felt it would be a good business model for Warner and might give rise to Bed and Breakfasts and other potential businesses as people sometimes come into a town for an event and stay the weekend.

Howard stated he agrees with many of the things Chairwoman Loz said and the idea of getting the Special Exception in the first place was the first step and the next step would be going before the Planning Board for Site Plan Review. This is a motion for denial and if it is voted down he expects the next step would be a motion for approval under which conditions to the use can be listed which they were with the first meeting and Notice of

Decision.

Gordon Nolen said he is hearing things he didn't think he would hear and that what the board has been doing the past fifty minutes is going over the denial because of the obvious ending of this meeting. Gordon said there were 27 people from the public who spoke on this, probably 24 who oppose it because it's in their backyard. He doesn't understand why there is even any questioning of the validity of what we're doing and if the board doesn't do the appropriate thing, in his opinion, how will they look at these people who came to protest this. The whole purpose for us to be on this side of the table is to do the right thing for those people out there and it is not a blind exercise in going through the motions.

Gordon continued that we as a board have an obligation to do the right thing.

Chairwoman Loz noted we all have our own opinions and that is what makes us a diverse board and representative of the town. There are as many views on this board as there are in the town and we also read many letters in support of this special exception. We're here to uphold the ordinances and make sure the voter's intent is carried forth and it's all right to have differing opinions, it makes us a better board.

Rick Davies moved the question to vote, Andy Bodnarik seconded.

The Zoning Board of Adjustment voted on Ricks move to vote. A roll call vote was taken with the results of 5-0-0.

Janice noted the board will now vote on the Motion to deny the Special Exception and clarified that a yes vote will approve the denial and a no vote will be against the denial. A roll call vote was taken with the results of 3-2-0 with Chairwoman Loz and Howard Kirchner voting no.

Chairwoman Loz stated the special exception has been denied and that RSA 677 provides the Board of Selectmen or any party to the action or any person directly affected a right to appeal this decision within 30 days after the date of decision. This notice has been placed on file and made available to the public inspection in the records of the ZBA.

## **5. UNFINISHED BUSINESS**

### **First Reading of Site visit Procedure Document – Revision date of 12/9/15.**

The Land Use Secretary handed out copies of the latest version of this document and the board members took a few minutes to read it. Rick Davies asked for clarification of the crossed out corrections and Lois noted they were changes that were discussed and decided on at the December 9, 2015 meeting. Rick asked about A-3 which read *Minutes of a public site visit shall be reported whenever there is a quorum of the Board or Subcommittee of the Board*. He asked what that implied if there are only two or three members present, do you not take minutes? The board discussed that they would not be able to have a Site Visit if they didn't have a quorum and perhaps the word quorum should be removed.

Corey Giroux suggested changing the word *will* to *shall* in several places and that there was a lot in paragraph A-5 that is extraneous. The board discussed this and was in agreement that some of the wording should be removed. Chairwoman Loz asked about the use of shall versus will and Corey explained that the word shall is in the affirmative and is a demand.

The board discussed paragraph C regarding the Applicant refusing permission for a Site Walk. Corey suggested adding some verbiage. There was discussion that the applicant can refuse permission, the board doesn't need to know why and that the applicant's refusal may be a reason to grant denial. Andy said his objection to adding that to the document is that this is a procedure for how to do something rather than indicating what the consequences of a visit would be. Corey said he agrees with that because if the board doesn't go on a site visit because the applicant refuses one and it impairs their ability to support their application, that consequence is theirs and only harms them. The rest of the document is directed at how the board should conduct themselves and that aspect does not, but regards an evidentiary issue about the application.

Chairwoman Loz asked if the board had any other comments. Rick Davies stated he was probably going to vote against this document because at the last site visit that was held, the old procedure worked fine. Janice

said after working on this document, she was better informed on how to run the site walk. Andy noted that if someone asks what they can do during a site walk visit, this lays it out. Corey stated what he likes about it is that it circumscribes public participation in the process and mentioned one held on Schoodac Road where members of the public were present and were a real detriment to the visit.

Chairwoman Loz asked Rick why he would potentially vote against this. He replied that there is so much going on in the document he is concerned about the board legally tripping on their toes and there is too much the board is composing. Corey noted that the Zoning Board of Adjustment can create procedures and Janice said she had looked at a lot of other NH Zoning Board site walk procedures and also discussed it with the OEP.

The board was in agreement that the changes discussed at this meeting would be done and the first reading would be held at the April meeting.

## **6. NEW BUSINESS**

Chairwoman Loz noted the board currently does not have a Vice Chair as Kimberley Edelman has resigned from the board. It was clarified that the Selectmen will appoint who will be the next full member. Rick asked Janice if her concern is that between now and April we do not have a Vice Chair and she replied it is. Corey nominated Andy which Gordon seconded. Rick asked if Andy was going to be around or if he would be on vacation and Andy replied he might be. Rick said he is not reappointing to the Planning Board so he could be the Vice Chair.

Andy Bodnarik nominated Rick Davies to be the acting Vice Chair, seconded by Chairwoman Loz. There was a roll call vote with the result of 5-0-0.

Chairwoman Loz stated that at the April meeting they would vote on a Chair and Vice Chair. There was discussion as to which alternate would be elevated to a full board member, the fact that Howard Kirchner has been an alternate the longest, that Janice had checked with Lois as to who had been an alternate the longest and she erroneously thought it was Beverley. Corey made the point that ultimately it's up to the Selectmen and it's not sure what criteria the Selectmen use to make that decision.

## **7. ADJOURN**

**MOTION** to adjourn was made by Andy Bodnarik, seconded by Howard Kirchner. A voice vote was taken with all in favor. Meeting was adjourned at 8:35 p.m.