

TOWN OF WARNER – ZONING BOARD OF ADJUSTMENT

Approved Meeting Minutes

August 10, 2016 7:00 PM

Warner Town Hall, Lower Level

Members Present: Chairwoman Janice Loz, Vice Chair Rick Davies, Andy Bodnarik, Howard Kirchner, Alternates Barb Marty, Cory Giroux, Beverley Howe

Land Use Secretary: Lois Lord

Members Absent: Gordon Nolen

1. OPEN MEETING

Chairwoman Loz opened the meeting at 7:00 p.m.

2. ROLL CALL

Roll call was taken with seven members present and one absent. Chairwoman Loz asked Corey to sit in for Gordon Nolen as full board member. Corey replied he would be happy to but since he has been absent the past two meetings would abstain from voting on the meeting minutes. Chairwoman Loz asked Barb Marty to vote on the meeting minutes.

3. APPROVAL OF MEETING MINUTES

Chairwoman Loz brought forth the Meeting Minutes of July 13, 2016 for approval. There were a few changes noted.

A **MOTION** to approve the minutes as amended and with a check on who said the verbiage in the next to the last paragraph was made by Rick Davies, seconded by Andy Bodnarik. A **roll call vote was taken** with the results of 5-0-0.

4. UNFINISHED BUSINESS

There was none.

5. NEW BUSINESS

Zoning Ordinance Change Suggestions – Chairwoman Loz noted that in the last meeting the board had talked about potential suggestions for changes on the Zoning Ordinance. She stated she went to the last Planning Board meeting where they discussed suggested changes to special exception from resident Carol Zablocki. Janice said she spoke to the Planning Board who asked if the Zoning Board could go over the changes and let them know what they thought about it and make other recommendations to the Zoning Ordinance and they will take them under review.

The board reviewed the document submitted by Carol Zablocki. Corey Giroux asked if this was a proposed amendment. Rick Davies said that technically it is not as it's not in the right format. Janice explained the document suggested changes to the time limit on special exceptions and variances. Corey said his first reaction is that he isn't sure if the Zoning Board is in the position to place a time limit on a variance after it is granted. The RSAs and laws may have something to say about it and he thinks the law on special exceptions is much more limited than that on variances. He suggested getting an opinion from Town Counsel.

Chairwoman Loz said if you grant a variance and they do it within the two years, it's a moot point as it's already been enacted. Rick said he thinks the background for this document is the case where something was granted, went away for a while and then came back which could happen anywhere in any situation.

Corey said what he thinks this is meant to address two things; the scenario that Rick mentioned and also the scenario where someone gets a variance and then doesn't act on it right away. For example they come back with a setback issue and want to build a barn and get approval but don't build it for five years. According to this proposed language, they would need to come back and get another variance which I don't think squares with the RSAs.

Chairwoman Loz commented that part of this addresses the fact that with current verbiage the variance has to be vested and they want to change that wording and omit the word vested. The second part addresses what happens after the variance has been granted.

Andy Bodnarik said he has two issues. One is once you're granted a variance can you go back, even if you amend the ordinance, can it be applied retroactively? Corey said generally that cannot happen and this would not apply to that situation. Andy continued, once you grant a variance that is acted on, if the zoning changes you cannot require them to take a structure down, which Janice agreed with. The second problem is abandonment which is raised in this document is not just for variance or special exceptions. There are a couple of pages in the Zoning Ordinance that talk about nonconforming uses so before I take on any changes that involve abandonment I would want to have legal counsel weigh in.

The board continued discussion on what abandonment and discontinued use would be defined as, that the document seems reactionary to the recent case that came before the Zoning Board of Adjustment and wouldn't resolve the issues that came up in that case, and that the board has always considered a special exception to run with the land and this would change that.

Rick asked what we have in the ordinance relative to special exception that would be issues. Special exceptions are relative to use so if you have that use there within 2 years, then it doesn't get used, and then is used again, that is the question being raised here. What the town should be concerned with is the fairness of this. If it's not fair what is the verbiage that would be changed.

Corey said he is less concerned with the initial vesting discussion than he is about the abandonment discussion. The vesting is not unreasonable to request that something be done within two years of it being granted. Rick noted RSA 674:33, Paragraph 1A and 4 (page 396 in RSA book) talks about a special exception being exercised within two years so we can't really change it.

The board discussed including reference to the RSA in the zoning ordinance, most towns' people are not going to be referencing the RSA book, and the concern with the abandonment issue is about uses that are permitted providing you meet the criteria so it's not a non-conforming use. Coming back to get a second approval for a permitted use doesn't seem right.

Andy noted that a lot of construction permits he works with have lifetimes of more than three years specifically because it takes longer particularly with large facilities. Rick said the other issue that comes up from a Planning Board point of view is, suppose there is a special exception and in the two years henceforth a lot of other things happen so that some of the provisions of the special exception don't happen and need to be relooked at. For instance, there is a requirement for site plan review that after 5 years, if a site plan hasn't been implemented, it's required to come back to the Planning Board as things like traffic, utilities, etc. could have changed. I see this as a similar situation where a special exception could in certain situations require a review if it hasn't been implemented. If it's been 20 years it's a whole different ball game.

Chairwoman Loz asked what the board wanted to do about this and what their recommendations would be. Rick said with the special exception it might make sense to change some of the verbiage to be fair. Andy suggested again to talk to legal counsel which Janice said she would do. Corey said this change would have to be proposed to and voted on by the town.

Andy noted the 2nd page of the document they are reviewing brings up some of the definition issues such as what is the definition of "other amusement". The problem he has is not with the suggestion that we should make some changes but the fact we don't have a definition in the ordinance to cover it. Rick suggested making a list of definitions we would like to see and Andy said he has a list.

The suggested change in the document from Carol Zablocki was to add “event venue and function services” to the Use Table under 19, 19a and 20. Andy said that adding more verbiage that is undefined is not going to accomplish anything. Beverley asked why we would change something that has been okay for a while and are we going to change the use table for every case that comes up? Andy said he is not suggesting that.

The discussion continued that the terms in the table should have definitions and that by adding a new line to the use table you are saying that use is permitted in other zones.

Barb Marty mentioned that she was at the Planning Board meeting where this was discussed and what they talked about was adding a new line for that use and not adding it to 19, 19a and 20. Janice asked Lois Lord if she could confirm that was what the Planning Board was thinking of doing. Rick added that the event topic needs to be addressed as well and there is legislation that may impact that.

Corey said that he feels the Zoning Board should push back to the Planning Board that before we add a whole new line item for event venue and functions services we should know what other amusement recreation services means from a Planning Board perspective so it’s not conflictive with what we are already doing. Andy said he thinks it’s a key in all of this is to have definitions. When the word “other” is included, you’re left at a loss as to how broad it is encompassed in that section.

Michael Ameral who was in the audience asked what the blanks in the use table mean. Andy explained what they have been told is that any blank there is non-permitted. Chairman Loz said what we are saying is if there is a separate line item with event venue function services, by including that it’s got to be permitted somewhere and the question is where. Each zone would have to be considered and decided on if it would be permitted there or not.

Corey said in putting on his citizens cap, he would also suggest the town might be wise to consider a discount retail zoning that addresses where, how and if it is permitted or not permitted. He noted there are a few developers in the area who are building a lot of discount retail and causing a lot of problems in abutting towns. Right now our ordinance doesn’t really address that issue and the aesthetics of the town and townspeople may not want that type of development but right now the Planning Board would be powerless to stop it.

Andy said he found a reference in the use table on Page 36, Item 2 which looks like a catch all item and refers to *retail, establishments selling or renting general merchandise including but not limited to*, and one of the items listed is *discount, and limited price variety stores*. He said the problem he has is when you go to the front of the ordinance and start looking, you start getting into definitions and yet none of those items in the section just referred to is defined.

Chairman Loz said what we need to pass on to the Planning Board is that we would like to see clarification of definitions anywhere it says “other” or “miscellaneous”. Andy gave another example on the Use Table number 15 where it says “essential services”. Everybody thinks that means police, fire, ambulance. Why not just reference the RSA because then there will be no conflict. Corey noted another one he would raise would be “box store” development. A lot of towns have an ordinance that addresses that. Rick noted there is a reference to square footage of buildings in the Commercial District in the ordinance. Corey made the point that the issue with a large building whether it is a big box store or a warehouse is once it goes out of business what happens to the building? One thing a lot of towns do is keep the zoning that allows something like that to a very limited area.

Andy said another definition that is missing is for *commercial parking lot or structure*. That is a critical one. Rick said the Planning Board at one point referred to architectural standards and for example, what is a power plant. The point is they referred to that for their interpretations. If there is an appeal of interpretation, that is where we would run into a problem of having no definition. The board again discussed the

importance of referencing an RSA to clarify things which would make the use table rather cumbersome so definitions could be used instead.

The board discussed the blanks in the use table and that some terminology to define those would be helpful such as a V for variance or NP for not permitted. The board was in agreement that an N would make sense to signify that it is not permitted and would need a variance.

Barb asked about the definitions on Page 4 of the Zoning Ordinance under livestock definition and it specifies “as will” domesticated strains of buffalo, or bison, etc. Discussion was held on this and it was uncertain what it meant. Andy suggested perhaps it meant “including but not limited to”.

Rick Davies had a few items with the Zoning Ordinance and noted last year the ZBA had a question on setback relative to a building, where do you measure on the building. He said he raised it with the Planning Board and they didn’t see an issue. The Zoning Board did seem to have an issue and do we want to define it. It was discussed that it could mean the building foundation or the nearest portion of a building including the overhang. Rick referred to Zoning Ordinance Section IV, Paragraph N, which reads: *If a building currently exists on the property and is closer to the abutter’s property line or Public Right-Of-Way than yard requirements for that District, an addition may be added to this building as long as the new construction is no closer to that abutter’s property line or that Public Right-of-Way than the present construction.* In some situations that’s fine and in others it could be a little over extended. We don’t have language as to what you can do with an existing nonconforming situation. It might be something that was there before zoning or it might be something that was granted as a variance. Rick offered to write some language to define this for the next meeting.

Corey asked if this is intended to address something? For example if he builds a barn on his property that is 10 feet from the property line he can lengthen his barn 40 more feet as long as that extension is not closer than 10 feet from the property line. Rick confirmed that and questioned if that is fair to abutters? The other thing is if you add an additional use, such as having an apartment in the barn. How is that handled?

Chairwoman Loz asked Andy to get his list together, Rick to write his definition and she will write up her thoughts and the board will review them at the next meeting before taking them to the Planning Board. Rick said another thing we can do is put together a letter to the Planning Board with the basic points.

Rick noted one more item relative to the use table is that there are a lot of items on there relative to municipal construction. RSA 674:53 says that municipalities have the authority to build where and what they want although they do have to come before the planning board for a hearing ahead of time. There are a lot of items on the use table saying “permitted” and “not permitted” or special exception. The point is if the town does not have to obtain a special exception then is changing the use table valid? Andy said this could also apply to number 8 which is cemeteries, most of which are town owned.

6. COMMUNICATION AND MISCELLANEOUS

Rick said Barbara Annis talked to him about getting Ben Frost to come in and talk about some of the items that were in the last NH Municipal Association flyer that the Land Use Office sends to all Zoning and Planning Board members. Instead of going to the seminar he could come and present to the boards. There are three topics being presented in Keene, Derry, and Littleton. The board thought this would be a good idea.

Rick suggested the board review application forms which would be helpful to all board members particularly new members. The board was in agreement.

7. ADJOURN

MOTION to adjourn was made by Corey Giroux, seconded by Andy Bodnarik. A voice vote was taken with all in favor. The meeting was adjourned at 8:20 p.m.