

TOWN OF WARNER – ZONING BOARD OF ADJUSTMENT

DRAFT Meeting Minutes

June 14, 2017 7:00 PM

Warner Town Hall, Lower Level

Members Present: Chairman Rick Davies, Vice Chair Janice Loz, Howard Kirchner, Gordon Nolen, , Corey Giroux, Alternates Barb Marty, Beverley Howe

Also Present: Land Use Secretary Lois Lord

1. OPEN MEETING

Chairman Davies opened the meeting at 7:00 p.m.

2. ROLL CALL

Roll call was taken all seven members present.

3. APPROVAL OF MEETING MINUTES

Chairman Davies brought forth the meeting minutes of May 10, 2017 for the board's approval. Several corrections were noted.

Corey Giroux made a MOTION to approve the May 10, 2017 meeting minutes as amended, MOTION seconded by Janice Loz. There was no discussion and a voice vote was taken with all in favor 5-0-0.

The meeting minutes of May 24, 2017 were brought forth for review and approval. A few changes were mentioned.

Vice Chair Janice Loz made a MOTION to approve the May 24, 2017 minutes as amended. MOTION seconded by Corey Giroux. A voice vote was taken and all were in favor 5-0-0.

Chairman Davies said the meeting minutes for the nonpublic have not been passed out as he's not sure how to handle them. He noted if they were passed out here for review they would become public documents. With respect to that the only way he knows of to review them is to go into a nonpublic. Vice Chair Loz asked if they could be reviewed just before being taken out of nonpublic. The discussion continued as to when that might be, whether the minutes themselves being sealed is a review or if the review could be sealed in a way that's other than a nonpublic session, and that the board had decided that when the case the minutes is concerning is resolved the minutes would be unsealed.

Chairman Davies stated this sounds like something that is not going to be accomplished tonight and suggested that Lois or himself contact the Municipal Association to get their thoughts on how to do this. He said he wants to be very procedure oriented on this so that next time we know exactly how the process works.

4. NEW BUSINESS

Review of 30 Day Appeal Period – Chairman Davies stated that a Citizens Petition had been received in the Land Use Office on May 24th, two and a half months after the March 8th decision on the special exception case for Dragonfly, LLC. It was suggested by counsel that we explain that to them at the meeting tonight but there is no one in the public audience so he asked the secretary to send them a note explaining that their submittal was significantly past the due date with reference to the RSA.

Ordinance Change Suggestions – Chairman Davies said he likes to do this yearly and we had a pretty big list last year of which a couple of the items were voted on at Town Meeting. He asked the board if there are any items they’ve found in the ordinance that need attention.

Corey Giroux noted the list we arrived at in 2016 was pretty extensive. Chairman Davies said a good deal of that was defining some of the items in the Use Tables. There were no additional items to be addressed for the Zoning Ordinance and Chairman Davies asked Lois Lord to send a letter to the Planning Board asking them to consider the items from last year’s list that haven’t yet been considered. He suggested the first letter that was sent be attached in case they have lost the original or need to be refreshed.

Vice Chair Loz asked Lois what the Planning Boards response had been to the list already sent and Lois replied they agreed to look at it when they do their yearly ordinance changes later in the year. The board discussed that Chairman Davies could meet with the Planning Board or the two boards could have a joint meeting with them to discuss this.

5. UNFINISHED BUSINESS

Attendance Clause for Rules of Procedure – Approval

Chairman Davies noted the board had read this document two meetings in a row and this is the third meeting. Rick read page 4 of the document being approved as follows:

III. ATTENDANCE

- 1. A member or alternate member will provide advance notice to the Chairman of the ZBA or the Land Use Secretary if he/she is to be absent from a scheduled and noticed meeting.*
- 2. If a member or alternate member is absent from three meetings in a 12 month calendar year, without requesting a leave of absence, then the Selectmen shall be notified so they may request a resignation or replacement of that member pursuant to RSA 673:13. A leave of absence may be requested by a member or alternate member and is subject to approval by the Chairman of the ZBA.*

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Chairman Davies said he is looking for a motion to approve this change into the Rules of Procedure per the Zoning Board of Adjustment. Corey Giroux moved the MOTION, seconded by Janice Loz. No discussion was held and a roll call vote was taken with all in favor 5-0-0.

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Documents on Website

Chairman Davies said he had asked Dan Watts what could be done relative to posting decisions of the ZBA on the website and all the documents that are submitted with applications. Chairman Davies said that Dan has already made a place for Notices of Decisions where the meeting minutes are and he’s not sure that’s the right place and he would rather have it underneath the tab of the Zoning Board of Adjustment. He asked if anyone had any comments. Vice Chair Loz said it was a good idea as the town should be aware of the decisions. Corey Giroux said it was great that he’s already gotten it done. Lois Lord asked if she would upload them as she does agendas and meeting minutes and it was confirmed that she would.

Chairman Davies said as far as the application documents, they were going to be a bigger issue because the entire application would be too big of a package to post so it would have to be a series of small files. The discussion continued that an application may be 6-7 documents which becomes cumbersome.

Vice Chair Loz said when you have an application it’s not a big deal to scan it and post it. When you start getting into attachments that’s where you get into larger PDFs and it gets unwieldy but you could probably

do just the application. She suggested it might be better to have copies here to hand out. The discussion continued that we never know how many people will show up and copies cost money. Beverley Howe made the point that anyone who is really interested should come to the Land Use and get copies. Lois said they can do that but they don't seem to be aware of it even though we make it known on public notices. Corey Giroux suggested having the application online with a notation that submitted exhibits will be presented at the public hearing.

Beverley Howe asked how many applications the Zoning Board gets each year and Lois Lord replied that it depends and for the ZBA last year we had 4 or so. There was discussion that if we got a lot it would be a time consuming job to post them online. Chairman Davies noted that in the past, when we researched some historical decisions, some of those meetings had 5-6 cases in a meeting.

Vice Chair Loz asked if the decisions are usually laid out in the minutes and it was agreed that they are and she made the point that we may not need to post them if that is the case. Chairman Davies said the decision is a separate document from meeting minutes and the voting results are in the decision and the minutes. He stated it's good to post notices because it's easier to view them if they are separate and suggested that he and the Land Use Secretary contact the Municipal Association to see what the downside is to putting a partial application on the website with none of its attachments. Chairman Davies made the point that some applications such as AT&T are about 3/8" thick but a company like that would be able to do a PDF format. We could include that request in our application submittal procedures.

Review of ZBA Application Wording – Chairman Davies noted there are two drafts which he had revised, one for Special Exception and one for Variance. The board began by reviewing the Variance application. Barb Marty suggested that both applications have the same format on the first page with the information only paragraph being first or second on both as long as it is consistent. Chairman Davies explained that initially they had instructions for each of the different types of appeals separate and then there was the question of how an applicant would know which type to use. That is why everything is in this order but it doesn't need to stay that way. After discussion it was decided that the change would be made so that on the Special Exception the order of paragraphs A.1 and A.2 would be switched to be the same as the order on the Variance application.

Vice Chair Loz stated what she finds confusing is the wording that says *general instructions for an Application for Appeal* which is at the top of both applications. She realizes that technically these are appeals but you also have the wording *Appeal of Administrative Decision*. The word appeal is used too much and maybe it would be better to use the wording *general instructions for an Application* since these are actually applications and you could keep the types of appeals wording there. Chairman Davies noted the folks who fill these out will be confused either way. He asked the board if anyone saw a problem in streamlining the first sentence by taking out the word appeal. After discussion the board decided to leave the wording as is since it is technically correct.

Chairman Davies stated the verbiage of the first three pages of both applications is the same once you get past A.1 and A.2. He pointed out the wording that had been added to the titles of paragraphs 3 and 4 which read (*information only, please use correct form specifically for this type*). The review continued with 2.a of the Variance application where it was noted the word *conditions* had been changed to *criteria* and *subject to appropriate conditions set forth by the Board* added to the last sentence of the paragraph.

In paragraph 3, *Appeal of Administrative Decision*, a notation had been added to include the appeal decision within 30 days wording in the Rules of Procedure document. The sentence referring to the Rules of Procedure document will be deleted (since it does not currently exist) and can always be added in at a later time if there is a question.

The review continued on page 2 of the Variance Application. Chairman Davies stated that any place it says *Zoning Board* he added *of Adjustment*. It was decided that after the first instance of *Zoning Board of*

Adjustment the acronym ZBA will be used instead. On item 2 the relevant Zoning Ordinance article is included for reference. Item 3 was reworded as per the Ordinance as follows *The Applicant bears the burden of proof to present sufficient evidence to the Zoning Board of Adjustment to permit the ZBA to grant the relief being sought.*

Chairman Davies continued the review of his draft with the rewording of item 5, 5a, 5c.1, 2 and 6, 5d and 5e on page 2. Item 5.d reads: *If this is an appeal for a variance, it must be based on a referral from the Board of Selectmen, Building Department, or the Planning Board. A copy of the determination of referral must be attached to your application.* Chairman Davies noted that to come before the ZBA there must be a referral from one of these entities. We haven't been toeing the line on this and with some situations it's obvious but with others, it would be nice to have feedback from the Planning Board or the Building Department as far as what the parameters are. If the applicant doesn't have it we would push the application back and tell the applicant we can't proceed. The board discussed this, the various ways the referral could be made and Chairman Davies said he will research the legality of it.

The discussion continued with the abutter notice fees under item 6 and if they should be increased as shown from \$7.00 per abutter to \$15 per abutter. Lois Lord noted the Planning Board had made the increase and the cost was arrived at by the cost of the mailing of the notices through the Post Office and the time it takes her to prepare them. She stated that given all of that the increase is fair.

Chairman Davies point out some item lettering that was off under item 6 that should be corrected and after discussion it was decided to not increase the application fees as they are somewhat comparable to other towns. The review continued with items 7 through 12 with minor changes. Chairman Davies explained he had reworded item 12 to more accurately reflect the relative RSA and he will include the RSA in the document.

On page 5 a second line had been added for explanation of what article in the Zoning Ordinance the exception was being requested for as there could be more than one.

On page 7 the verbiage of the Abutter List was discussed and the board reviewed the applicable RSA 672:3. Chairman Davies noted the paragraph on abutter noticing is getting quite lengthy but wasn't sure how to shorten it in while leaving the basic information in. The fact that the document states the Board of Selectmen should receive notice if the property abuts a street was brought forth. Chairman Davies said he feels the Board of Selectmen notice is more of a courtesy unless town land is an abutter and then it doesn't make sense to charge the town to deliver the notice to itself through the Post Office.

Notice to the Planning Board was discussed and whether it is needed. Chairman Davies said if the Planning Board is unaware of an application it may be due to one of the gaps we run into in not having a fulltime Planning Coordinator as many towns do. Vice Chair Loz made the point that if the Planning Board gave the Zoning Board of Adjustment a referral then they would be aware of it.

The Special Exception application was reviewed next with many of the changes on pages 1 through 4 being the same as the Variance application. A new paragraph was added under the conditions that must be met for a Special Exception to provide information and also reference the relevant Zoning Ordinance Article and RSA. Further minor verbiage changes were discussed on page 5 and it was noted page 6 changes were the same as the Variance application. Page 7 also had similar changes to the Variance application. It was noted that a Special Exception does not need the referral which the Variance application requires per the RSA although it might be good to have one.

6. COMMUNICATIONS AND MISCELLANEOUS

Documents from town counsel Upton Hatfield was passed out to board members with some procedural information. Chairman Davies noted there was an 18 page document received from them today which is what was submitted to the court and it was decided that Lois would email the PDF to all board members.

Chairman Davies brought forth some items regarding the Zoning Board of Adjustment Rules of Procedure. He noted that it is not a good idea to mingle with applicants before or after meetings although it is important to be cordial to them and we should remain neutral and indifferent to the outcome. Chairman Davies stated that the Planning Board Chair, Ben Frost made a statement a couple of meetings ago about the fact that he was contacted by a former elected official relative to this case before the court and he thought it was inappropriate. The reason he brought it up is to warn board members to be careful about what you say regarding any case, and with this one it could come back before the board. We need to be impartial and don't speak or act in a way that would be perceived as prejudging an application or situation. We are here to serve everyone; it is our constitutional duty as agents of the government to assist all members of the public whether they be applicants or abutters. Chairman Davies noted those were the words Chairman Frost of the Planning Board used and they apply to any situation. Leave things at the meeting where they are discussed when appropriate.

Lois Lord stated that Corey Giroux had submitted a good document from the NH Bar Association entitled Planning and Zoning 101 and if anyone wanted copies she could provide them. Corey offered to share the PDF version with the board members directly via email.

Chairman Davies said if no new applications are received and nothing else comes up there will be no Zoning Board meetings in July or August.

7. ADJOURN

MOTION to adjourn was made by Gordon Nolen, seconded by Howard Kirchner. A voice vote was taken with all in favor 5-0-0. The meeting was adjourned at 8:50 p.m.

TOWN OF WARNER
ZONING BOARD OF ADJUSTMENT

WEDNESDAY, OCTOBER 11, 2017

MOTION TO AMEND

JUNE 14, 2017 DRAFT MEETING MINUTES

APPROVED Amendment as follows made at the October 11, 2017 Zoning Board of Adjustment Meeting to the ZBA June 14, 2017 Draft Meeting Minutes:

From: Draft Minutes of the 06/14/17 ZBA Meeting

A. Taken from page 2, 2nd paragraph

Version 1, as it appears now:

Corey Giroux noted the list we arrived at in 2016 was pretty extensive. Chairman Davies said a good deal of that was defining some of the items in the Use Tables. There were no additional items to be addressed for the Zoning Ordinance and Chairman Davies asked Lois Lord to send a letter to the Planning Board asking them to consider the items from last year's list that haven't yet been considered. He suggested the first letter that was sent be attached in case they have lost the original or need to be refreshed.

Vice Chair Loz asked Lois what the Planning Boards response had been to the list already sent and Lois replied they agreed to look at it when they do their yearly ordinance changes later in the year. The board discussed that Chairman Davies could meet with the Planning Board or the two boards could have a joint meeting with them to discuss this.

Version 2, suggested re-wording of Version 1:

Reword with underlined italics to read as:

Corey Giroux noted the list we arrived at in 2016 was pretty extensive. Chairman Davies said a good deal of that was defining some of the items in the Use Tables. *“Chairman said one item that he brought up was voted on in March 2017, it addressed “Events”. He said what needs to be addressed is: What is the definition of “Events”? What is an “Event” the ZBA would deal with? What is an “Event” the Selectboard would deal with?”* Chairman Davies asked Lois to send a letter to the Planning Board asking them to consider the items from last year's list that haven't yet been considered *“and*

add a review of the Use Table". He suggested the first letter that was sent be attached in case they have lost the original or need to be refreshed.

Vice Chair Loz asked Lois what the Planning Boards response had been to the list already sent and Lois replied they agreed to look at it when they do their yearly ordinance changes later in the year. "The board discussed including language in the letter that Chairman Davies would be available to meet with the Planning Board and he would consider holding a joint meeting or doing both, whatever was agreeable to them".

B. Taken from page 3, 1st paragraph

Version 1, as it appears now:

Beverley Howe asked how many applications the Zoning Board gets each year and Lois Lord replied that it depends and for the ZBA last year we had 4 or so.

There was discussion that if we got alot it would be a time consuming job to post them online. Chairman Davies noted that in the past, when we researched some historical decisions, some of those meetings had 5-6 cases in a meeting.

Version 2, suggested re-wording of Version 1:

Reword with underlined italics to read as:

Beverley Howe asked how many applications the ZBA receives per year and Lois Lord replied that it depends "and in 2016 there may have been "4 or so". Janice said that was not a lot, Lois agreed and Chairman said that it has been may be "1 or 2" annually in the past few years.

Beverley said the Board may be concerned about this unnecessarily for right now. Janice agreed that it may not be a concern now but if the number of applications begin to increase to 4-5 at a hearing like in the past it would be very time consuming and a "test" on the board's secretary working only part-time.

Chairman reminded the members that in researching past ZBA decisions some of the ZBA meetings had 5-6 cases. Chairman said he was "choosing his words" to be

diplomatic but had to say it directly: he did not believe all pertinent cases are brought forth to the Zoning Board of Adjustment.

Beverley agreed and said that “things just happen”. Chairman said it may be fine to not have certain cases come before the board but there are things that should and previously, the process was such that the ZBA made decisions, got things done, 5-6 cases at a meeting, and in the course of a year there were cases every month for the ZBA to hear.”