

TOWN OF WARNER

Zoning Board of Adjustment

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WEDNESDAY, SEPTEMBER 13, 2017 MEETING MINUTES

1. OPEN MEETING

Chairman Rick Davies opened the Wednesday, September 13, 2017 meeting of the Warner Zoning Board of Adjustment at 7:00 PM in the main floor auditorium of the Warner Town Hall, 5 East Main Street, Warner New Hampshire.

2. ROLL CALL

In Attendance:

Regular Members

Present: Rick Davies, Chairman, Janice Loz, Vice-Chairman, Howard Kirchner

Absent: Corey Giroux (e-mailed notice he would not be attending this meeting)

Resigned: Gordon Nolan

Alternate Members

Present: Beverley Howe.

Absent: Barb Marty (e-mailed notice she would not be attending this meeting)

Chairman requested that Alternate Beverley Howe step in for this meeting as a Regular Member due to the resignation of Gordon Nolan. Ms. Howe Accepted.

3. APPROVAL OF MINUTES

Members discussed the draft minutes of the last meeting (June 14, 2017) of the Warner Zoning Board of Adjustment (ZBA). Chairman had questions concerning the wording and his recollection of two discussions, (pages 2 and 3). Chairman said he did not think these items were complete and would like to listen to the audio (or have secretary listen). All members in agreement to delay approval of minutes.

4. SPECIAL EXCEPTION APPLICATION

Case: ZBA 2017-01.B Special Exception* *Corrected to: ZBA 2017-01-02 Special Exception
Applicant: Dragonfly Holdings, LLC
Property Owner: Dragonfly Property Management, LLC
Property Location: Warner Road, Map 3 Lot 33,
Zoning District: C-1

Description: The application will be reviewed in accordance with the Merrimack County Superior Court order dated July 28, 2017 in the Zoning Board of Adjustment appeal of Warner Road Holdings, LLC v. Town of Warner, Docket 217-2017-CV-00199. Special Exception to Zoning Article XI.B, Use Table Retail and Services Number 20 Other amusements and recreation services, indoor.

Proposed use: Indoor Gun Range and Retail Store

Chairman announced that a typographical error had been made in numbering this Case. He stated the correct Case number for the Dragonfly Holdings, LLC Special Exception Application is, "ZBA 2017-01-02".

Chairman said that to conduct an orderly meeting with such a large crowd, speakers are requested to raise their hands and be recognized by the Chair before they speak but a speaker may attract the Chair's attention if not recognized. To the Board Members: Chairman suggested they end the first hearing at 9:30 PM and continue it, if necessary, to the next regularly scheduled ZBA meeting (October 11, 2017). He said this would allow time to open the second Public Hearing, end at 10:00 PM and continue, if necessary, to the next regularly scheduled ZBA meeting (October 11, 2017). Chairman said opening both Public Hearings at this meeting, as publicly noticed, would save the expense of noticing another Public Hearing if a Continuation is necessary.

Motion by Chairman Rick Davies:

That the ZBA end the first Public Hearing at 9:30 PM and continue it, if necessary, to the next regularly scheduled ZBA meeting (October 11, 2017) to allow time to open the second Public Hearing, end at 10:00 PM and continue, if necessary, to the next regularly scheduled ZBA meeting (October 11, 2017) in an effort to Open both Public Hearings that were noticed and save the expense of noticing another Public Hearing if either Hearing is Continued. Second by Howard Kirchner.

Question by Beverley Howe answered by the Chairman: more time is allotted for the first hearing - "up to 9:30 PM" - but if it ends earlier, then the second Public Hearing will begin. He said he did not want to proceed with the first hearing and not allow time for the second; the Board does not procedurally have a set time to close hearings and meetings and if the Noticed Public Hearing is not Opened on the stated date then notices must be sent out and paid for again for another new Public Hearing date.

Howard Kirchner: Yes Janice Loz: Yes Beverly Howe: Yes Rick Davies: Yes
Vote on the Motion: 4 – 0 All in Favor. Motion Passed.

Next, the Chairman explained that the preferred number of members for a meeting and hearing is five but four is a quorum which is the number of voting members at the meeting tonight. As a way of providing information to the public, Chairman said he would read the following general overview of the ZBA:

"The Zoning Board is considered a 'quasi-judicial' board. The process followed by the ZBA is not arbitrary. There are detailed rules that must be followed which have been established by the state, town, the ZBA's own rules of procedure, the court, etc. Among the ZBA's implied responsibilities is to remain impartial and listen with interest to all testimony."

Chairman said the next step to move forward Case: ZBA 2017-01-02 is to address the recusal of member Beverley Howe. He said this is a “Re-hearing” of a previous case at which Ms. Howe recused herself. Ms. Howe agreed and said in order to be in compliance she would also recuse herself from Case ZBA 2017-01-02. She stated that the reason for her previous recusal was unchanged: an abutter to the property is like family to her and the perception exists that she may not be able to be impartial in deciding the case.

Chairman Accepted Ms. Howe’s recusal. Ms. Howe proceeded to leave the members table and take a seat in the audience.

a. Close Meeting and Open Public Hearing

Chairman announced that with the recusal of Ms. Howe, the remaining 3 members did not make a quorum. He said he has been advised that as an administrative matter when there is not a quorum of the board the meeting is to be “Continued”. The 2 sitting members said they understood and were in agreement with the process.

b. Continue Meeting/Public Hearing

Chairman said: Let the Record show the Public Hearing of Case 2017-01-02 will be Continued until the next scheduled ZBA meeting on October 11, 2017, at 7:00 PM, in the Town Hall.

Chairman answered a question from a person from the Alfano Law Office that the ZBA is addressing only the Special Exception at this time.

5. APPEAL OF ADMINISTRATIVE DECISION APPLICATION

Case: ZBA 2017-03 Appeal of Administrative Decision

Applicant: Warner Road Holdings, LLC

Property Owner: Dragonfly Property Management, LLC

Property Location: Warner Road, Map 3 Lot 33,

Zoning District C-1

Description: Appeal of an Administrative Decision on the issuance of a driveway permit for Dragonfly Property Management, LLC.

Chairman read the case information. He asked Beverley Howe to return to the ZBA table. He explained this was a different case but had similar abutters as Case 2017-01-02 and said Ms. Howe may need to recuse herself from this case also. Ms. Howe stated that she agreed and would recuse herself, re-stating that like the case prior, it may be perceived that her close ties with an abutter may not allow her to decide the case impartially. Ms. Howe stepped away from the table and sat in the audience.

a. Close Meeting and Open Public Hearing

Chairman stated that the recusal of Ms. Howe reduced the board to three members, which is not a quorum.

b. Continue Meeting/Public Hearing

Chairman said: The Public Hearing of Case 2017-03 will be Continued until the next scheduled ZBA meeting on October 11, 2017, at 7:00 PM, in the Town Hall

The 2 sitting members said they understood and were in agreement with the process. Chairman welcomed the audience to stay while the board continued on to the next item on the agenda. Members continued with the meeting after a brief period of time while a majority of the audience exited the hall.

6. UNFINISHED BUSINESS

a. Review draft revisions of ZBA Application forms.

Handouts of revised applications for a Variance and Special Exception were passed out to the members.

Chairman explained the revised applications were discussed at the June 2017 meeting. He said he did not include them in the member's information packets that were sent prior to tonight's meeting because he anticipated a busy meeting and did not think there would be time to review them. He said the board could review the revisions he made, much of which has already been discussed or members could go through forms on their own. He asked members to look at the last 2 pages of the Variance handout- at the new horizontal format of the abutters list (vs the previous vertical list). Members discussed printing problems with horizontal and vertical pages within the same document and causes could possibly be restrictions of the software versions used in the Town Offices. Chairman stated that the Town Administrator, Jim Bingham, in email correspondence, said there was an issue with the Land Use computer and some computers were being reviewed for updates in the next budget.

Continued discussion included: a suggestion to increase the height of the rows, shade every other row or double space - some applications are hand written and others typed, the preamble on how to do an abutters list includes notifying the Board of Selectmen with a courtesy notice as opposed to a certified notice because, according to advice from Town Attorney and NH Municipal Association Legal, the Board need only be notified on an application on Town property, (the Select board is currently notified on all applications), move the preamble from the top of the abutters page where it takes up space to the front of the application with the instructions, leave the preamble on the abutters page where it can be read when the abutters list is compiled.

Chairman asked members to review the form and he would include it on the next meeting agenda with such wording as: "As time permits". The board discussed having Regular and Alternate positions filled - three vs five Alternates and the Chairman's attendance at a Planning Board meeting to add an item to the list the ZBA was recommending the Planning Board look over.

Chairman read Item B on the Variance form. He said he asked at the Planning Board meeting if that board would refer applicants to the ZBA. He was told, "No." He said the Planning Board holds and encourages conceptual consultations but they cannot give anything that is "binding". He said they may give "suggestions" but not "a referral" as stated on the Variance form so the ZBA may want to change the wording to suggest applicants may provide *any* referrals received (ie: from Planning Board, Building Inspector, etc.) to the ZBA or schedule a Conceptual Consultation with the Planning Board.

Chairman suggested including agreed changes to other applications and forms where applicable for uniformity.

7. MISCELLANEOUS

a. The Board discussed member attendance; canceling a meeting is allowed if the meeting was scheduled to conduct business and not to address a submitted application; the inability to cancel an advertised meeting; RSA's govern that the ZBA will meet as needed; Warner ZBA procedures state the board "shall" meet in April for the election of officers; interested volunteers should be directed to the town website or selectmen's office for a sign-up form; Selectmen have interviewed ZBA candidates before appointing them as members; in previous years candidates have come to the ZBA for information too.

b. The Board discussed an agenda item on previous night's Selectmen's Meeting to Accept ZBA Member Gordon Nolan's resignation. Public comment accepted from Martha Mical, who attended the Selectmen's meeting, was that the resignation was accepted but not followed by action or discussion of filling the vacancy. She suggested the ZBA compose a letter to the Selectmen explaining the lack of a quorum resulted in the Continuation of two Hearings and express how crucial it is to fill the vacancies.

Motion by Rick Davies: That he, as Chairman of the ZBA, write a letter to the Board of Selectmen informing them that the ZBA did not have enough members at their most recent hearings to conduct business for two cases and would like to request the Selectboard's prompt action to appoint and fill the vacant Regular Member position and to appoint additional Alternates as they become available.

Janice Loz asked if the letter could include asking the Selectmen to elevate an Alternate to fill the Regular Member vacancy created by the resignation of Gordon Nolan. Chairman said that is the process the Selectboard has historically followed but it is their process to choose and not for him to tell them what to do. He agreed Alternate Beverley Howe would be next in line to be elevated since she has the most seniority and would amend his motion to include informing the Selectboard.

Motion by Rick Davies: That he, as Chairman of the ZBA, write a letter to the Board of Selectmen informing them that the ZBA did not have enough members at their most recent hearings to conduct business for two cases and would like to request the Selectboard's prompt action to appoint and fill the vacant Regular Member position and to appoint additional Alternates as they become available and to consider elevating Beverley Howe, as the senior ZBA Alternate, to a Regular Member. Second by Beverly Howe. Hearing no further discussion, Chairman called for a vote.

Howard Kirchner: Yes Janice Loz: Yes Beverly Howe: Yes Rick Davies: Yes
Vote on the Motion: 4 – 0 All in Favor. Motion Passed

c. Chairman explained the procedural handling of member concerns, comments or questions while a case is still open; correspondence should go through the Land Use Secretary to the Chairman and a Special or Non-Public meeting can be scheduled.

d. Chairman read into the record the September 6, 2017 letter of resignation from Gordon Nolan and the September 13, 2017 letter from Corey Giroux in which he explains a probable change in his situation which will affect his continued service on the ZBA as well as how it influenced attending the 9/13/17 ZBA meeting.

Motion by Howard Kirchner: That the members of the Warner Zoning Board of Adjustment acknowledge and extend their appreciation to Gordon Nolan for his years of service on the board. Second by Beverley Howe.

Howard Kirchner: Yes Janice Loz: Yes Beverly Howe: Yes Rick Davies: Yes
Vote on the Motion: 4 – 0 All in Favor. Motion Passed

e. Chairman reminded members that when he accepted the Chairman position he stated that his house was on the market for sale. He said there is a very good probability that it has sold and the closing will occur in early October. He said his post-closing plans are not determined yet, causing him to research information in regards to his member status.

Discussion followed that included the importance of increasing the number of Alternate Members, speaking to people directly has been a successful way to recruit new members and trying to confirm member meeting attendance.

7. ADJOURN

Motion to Adjourn by Janice Loz. Second by Beverley Howe.
Vote on the Motion: 4 – 0 All in Favor. Motion Passed

Meeting Adjourned at 8:25 PM

Respectfully submitted,

Judith A. Newman-Rogers,
Acting ZBA Secretary