

TOWN OF WARNER

ZONING BOARD OF ADJUSTMENT

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APPROVED MEETING MINUTES

Wednesday, November 08, 2017

7:00 PM Warner Town Hall

Warner NH 03278

1. OPEN MEETING

Vice-Chair Janice Loz opened the Wednesday, November 8, 2017 Meeting of the Warner Zoning Board of Adjustment at 7:00 PM in the Upper Hall in the Warner Town Hall, Warner, New Hampshire.

2. ROLL CALL

a. Attendance: Regular Members Present: Janice Loz, Vice-Chair

Howard Kirchner

Barbara Marty

Absent: Beverley Howe

Resigned: Rick Davies, Chairman

Alternate Members Present: Sam Bower

Elizabeth Labbe

b. Chairman Resignation: Vice-Chair Loz announced that Chairman Rick Davies had recently resigned and read into the record his letter of resignation. (Copy filed with these minutes) Vice-Chair thanked Rick for his service to the community and specifically to the Zoning Board.

c. Elevate Alternates: Vice -Chair asked Alternate Sam Bower to sit in for Rick Davies and Mr. Bower accepted. Alternate Elizabeth Labbe was asked to sit in for Absent Member Beverley Howe and Ms. Labbe accepted.

d. Acting Chair Introduction: Vice-Chair, Janice Loz, said her name is pronounced “Lowes – like the store” when she introduced herself to the audience and said she would be serving as the Acting Chair. She asked that people be patient, she had very little time to prepare, if her handling seemed awkward it may be because she had things scripted. She said the next order of business is to nominate an Acting Vice-Chair.

e. Acting Vice-Chairman Nomination: When asked, Barbara Marty said she felt she had not been a Full Member long enough to take the position. She asked Howard Kirchner. He said he would volunteer.

Motion by Janice Loz: Nominate Howard Kirchner as the Acting Vice-Chairman of the Warner Zoning Board. Second by Barbara Marty. Voice Vote. All in Favor. Motion Carried.

f. Land Use Secretary: Acting Chair thanked Lois Lord, who resigned as Land Use Secretary, for all her service. She said Lois always had a positive attitude, was a very pleasant person to see in the office, was extremely accurate and helpful. She said Judy is also accurate and helpful as the Acting Land Use Secretary until December when new hire, Diane Riccardelli, will take over.

g. Meeting Rules and Minutes: Acting Chair read some Rules of Procedure for the Meeting which included that Members raise their hands or get her attention if they wish to speak. Minutes of the October 11,

2017 Meeting and October 19, 2017 Site Visit were reviewed next. Mr. Kirchner stated the word “bulistic” should be corrected to “ballistic” in the October 11th minutes. Hearing not other comments,

Motion by Barbara Marty: Approve Zoning Board of Adjustment (ZBA) Minutes of the October 11, 2017 Meeting with corrections. Second by Howard Kirchner. Voice Vote. All in Favor. Motion Carried.

Mr. Kirchner said he remembers at the end of the Site Visit, Chairman Davies asked members to pause and take notice of the noise level. Acting Chair said she remembered that he asked people to observe the background noise at the site, noise coming from the highway and “such”. Mr. Kirchner agreed. Hearing not other comments,

Motion by Howard Kirchner: Approve (ZBA) Minutes of the October 19, 2017 Site Visit with the addition stated. Second by Barbara Marty. Voice Vote. All in Favor. Motion Carried.

h. Time Limits for Cases: Acting Chair said they would like to put time limits on the three cases scheduled on the Agenda. Proposed: 7:00 – 8:00 Case 2017-01-02 Special Exception
8:00 – 9:00 Case 2017-03 Appeal of Administrative Decision
9:00 – 10:00 Case 2017-04 Variance

Barbara Marty said due to the large crowd in attendance to hear the Special Exception she did not think it fair to not give that case the full meeting, the Appeal of the Administrative Decision should not take an hour if it has to be heard tonight and the Variance will have to be continued. She said she did not think the people who were at this meeting should be asked to come back to another meeting especially since many of them have been to 2 or 3 meetings already to try to get an opportunity to speak. She said she felt the board owed the people who show up to give the case more time. Acting Chair said it is hard to say who is here for which case.

Paul Alfano, Attorney representing Warner Road Holdings, Madgetech, said Case 2017-03 was his clients and he would be willing to postpone it until the next hearing, the driveway has already been built and it would leave more time for Case 2017-01-02 to be heard.

Acting Chair indicated a 3 inch stack of paper in front of her on the table and said members have correspondence in the pile to read from the public - they need to be heard and there are 100 letters from Hopkinton to read before they make a decision. She said she did not think they would get through all this tonight and the meeting would most likely be continued. She said she did not know if there would be time to hear from the public after the abutter speaks and then how much time should be allowed. Acting Chair said if the applicant wished to push the Appeal to the next meeting that would give the Special Exception another hour but she felt the Variance should also have time to be heard as an item on the Agenda.

Ms. Marty agreed with the Acting Chair and added that the Special Exception will have another hour. (7:00 to 9:00 PM). Howard Kirchner said it would be good to get through the Public Input tonight, close the Public Hearing and use the December Meeting for deliberations. Sam Bower agreed and said giving time to hear the Variance may result in a Decision allowing the applicant to avoid waiting at multiple meetings. Elizabeth Labbe also agreed.

Motion by Barbara Marty: Accept the offer to place Case 2017-03, Appeal of Administrative Decision, on the December Meeting Agenda of the Zoning Board of Adjustment and allow up to 9:00 PM to hear the Public Comment portion of Case 2017-01-02, Special Exception, and

hear Case 2017-04, Variance, at 9:00 PM. Second by Elizabeth Labbe. Voice Vote. All in Favor. Motion Carried.

3. SPECIAL EXCEPTION APPLICATION

a. CONTINUATION OF THE OCTOBER 11, 2017 PUBLIC HEARING

Case: ZBA 2017-01-02 Special Exception

Proposed Use: Indoor Gun Range and Retail Store

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.

Acting Chair said if there is not enough time to hear all Public Comments tonight, the hearing will be continued, public comment may be emailed or mailed into the Land Use Office and it will be distributed to members to read and will become part of the public record.

Regarding Regional Impact, Acting Chair said: notice was given to Central New Hampshire Regional Planning Commission, Hopkinton and Webster; asked if there was a representative present who wanted to speak; hearing no response stated that the Land Use Office received a large amount of correspondence from Hopkinton within the past 2-days; have not had adequate time to review the 100+ letters yet; members will review them before the December Continued Hearing.

Informational: Acting Chair read: The ZBA Deliberation Decision will be based on the criteria for a Special Exception indicated in the Town of Warner Zoning Ordinance Article XVII. The Board shall hear and decide a request for the Special Exception and shall grant a Special Exception only when it finds each of the following criteria has been met.

- a. The use requested is identified in the Use Table of the Zoning Ordinance as a Special Exception in that respective zoning district, or as otherwise stated in the Zoning Ordinance.*
- b. The requested use is essential or desirable to the public convenience or welfare.*
- c. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals or welfare.*
- d. In OC-1 and OR-1 zoning districts only: Use of structures must conform to road access and availability of all services to that parcel at the time the Special exception is requested”*

She asked that members make notes as they relate to the facts and findings or criteria in the Special Exception for use during deliberations. Abutter was asked to come forward and present.

Attorney Paul Alfano placed a diagram of the Dragonfly property and abutting Madgetech property on the easel before proceeding. He said:

I am Concord Attorney Paul Alfano representing abutter Warner Road Holdings who owns the lot west of the proposed proposal, Map 3 Lot 33; my client owns Lot 34; Madgetech business is located on

Lot 34; second largest employer in Warner; they make high tech devices, Data Loggers, which measure temperature, air pressure, etc...; present is the President and Member of Warner Road Holdings, Norm Carlson.

Picking up where I left off prior, we are opposed to the proposal; to recap - a Fact Sheet was passed out and reviewed at the previous hearing; want to give additional background of the project through the eyes of the various experts hired; the items in the reports will be referred to as I go through the criteria; they are all very relevant.

Fire and Explosion Hazard: The property should be deemed an “H1 Classification” which requires a minimum setback of 75 feet; will probably be more than that but expert has said 75 feet is the minimum; the reason for this is safety; the building has a higher than ordinary risk of fire and explosion.

Noise: Conclusion from the expert was that sounds from the firing range would be clearly obvious at the boundary between my client’s and the subject’s property; I was not at the Site Visit but those that were saw where Norm has the picnic tables, volley ball net (pointed to the location on the property diagram on display); building is proposed at the minimum 25 foot setback; gun shots will be clearly obvious at that point; will also be clearly obvious at the facade of the Madgetech building; the reason the noise will be just as loud at both locations despite the large distance, and this is all in Erich Thalheimer’s report, is it has to do with how sound travels; in this case a lot of it will come out of the roof; that enables it to travel; from Warner Road, to people using the road to recreate, noise will be lightly audible most of the time; noise will be more audible in the evenings; at the 5:30 PM Site Visit the ambient noise was a little louder because it was rush hour; note that Mr. Thalheimer’s report took into consideration the sounds from the highway; notwithstanding the cars on Rt 89, the gunshots will be clearly obvious at the boundary at my client’s property; noise will be louder in the evening due to the range open until 10 PM; the report said the actual shooting noise levels will be louder when other pathways like HVAC and other openings are taken into consideration; his conclusions are conservative.

Environmental Impact: Report by Tim Stone summarized in the Fact Sheet; Mr. Stone prepared four reports after being assured he had all the information; Mr. Stone’s comments on the proposal used such strong language, I was “taken aback”; he said there is still inadequate information available to demonstrate that the proposed development will not pose a risk to the public health, safety and the environment; he said the plan does not provide enough information to demonstrate that it will not pose a risk and the air and lead testing that needs to be done is totally inadequate and demonstrates Dragonfly’s total lack of understanding of the complexity of operating firearms.

Property Values: A residential property appraiser was hired to get “hard data” on the impacts a firing range has on property values; his report - included in the materials (given to board members) concludes there will be “measurable negative impacts on surrounding residential values”; included in the materials is a letter from a commercial broker, Steve Brown, saying there will be a significant negative impact on market values of surrounding businesses and homes; this is the only information the members have from a third party on property values; this is important, I will come back to this – objective, third party information; not “us” telling you what “we” think or the “applicant” telling you what “he” thinks.

Gun Specific Statutes: They relate to a number of things I will address: one being that – when I talk about the elephant in the room - which is guns are uniquely deadly items; can not get around that; forget the political stuff; that is what they are; they are designed to kill; that is what they do and that is why there are a lot of statutes that deal with that.

RSA 644:13 prohibits any person from discharging a gun or firearm within 300 feet of a commercial building; Madgetech is 100 feet away; discharge within 300 feet may only be done with permission from the

Chief of Police or governing body; any person, I have been raising this from the beginning; the board needs to have that answer before making a decision; the applicant needs to demonstrate how he will satisfy that statute; there is also another 300 foot setback where you can not discharge a firearm from a permanent residential occupied dwelling without consent of the dwelling owner; this is a setback or as I call it, "a buffer zone" statute related to guns.

RSA 159-b – which I find particularly interesting because it prohibits someone from bringing a nuisance action, complaining against noise, once a gun range is built even if the type of guns are increased or made louder; to me, being a lawyer, dealing with the common law and certain rights people have to prevent injury to themselves that is a striking statute.

Be aware of that - and all the statutes of 300 foot setbacks; it gets to shoehorning this business into this very narrow lot; it does not make sense to put it here but that is another reason why.

RSA 159 - restrictions of the sale and use of pistols,

RSA 159-d - state implementation of a national criminal background check

RSA 207 – additional restrictions on firearms

Then there are Federal regulations

A few things to add:

On the Noise Issue: at the October 11 (2017) hearing, Mr Miller made several statements regarding noise; in particular he appeared to attack Erich Thalheimer's report; when I looked at the minutes it was not very clear what he was trying to say; I looked at the minutes and he also submitted his revised plans; so I asked Mr. Thalheimer to do a final sweep, he had the minutes and revised plans; his report was sent to you a couple days ago with a cover letter; his report, frankly, is stunning; I have never seen, except for the Tim Stone letter, such strong language from an expert; here are some of the words he used: "complete lack of acoustic understanding" - he is talking about Mr. Miller's interpretation of his own report on sound - "misleading and incorrect" "ludicrous" "fallacy" and I summarized these points in my letter; there were a couple I wanted to point out; it illustrates a theme and that is the burden; you have to make your decision based on the evidence before you; and your decision has to be reasonable; you have to have evidence to rely on; what I am going to show you is that – you have these experts reports, you have what is considered facts from these people; you have statements by the applicant on the hand; unless you are satisfied you understand what he is trying to say I do not think you can agree with that.

One example: it has to do with the noise issue; on October 11, Mr. Miller said – he appeared to be attacking Mr. Thalheimer – he said he is going to have steel plates over the firing lanes that are going to go for 25 feet; then he said, "Most ranges would go 8 feet. I'm going to exceed that." Mr. Thalheimer, Miller is going to use by a company called *NuDura*; Mr. Miller said at the last meeting the system is going to provide a sound transmission reduction in as much as 86 decibels; Mr. Thalheimer said that is "ludicrous"; part of the reason is if you look at the *NuDura* materials, it is part of Mr. Miller's submissions, their sound reduction is actually 52 decibels; I am not going to get into the details, it is all in here but it is example after example of where he makes up stuff.

For example: the HVAC system on the roof – Erick says it will have no impact; sound goes around it; Mr. Miller told you at the last meeting that the HVAC system upstairs will block the sound; it is not going to block the sound; that is not how sound travels; in the sally port, he represented that the sally port would reduce the sound coming to my clients property; no, it may block sound going to the south but it will have no impact on the sound going sideways; sally port is back here (pointing to its location on the display).

I wanted to point those out; why it is important to rely on the usefulness of these experts reports we have provided you; I am going to move on to the criteria for a Special Exception; any questions on the reports can be asked and there will be answers.

The burden of proof is on the applicant to demonstrate in sufficient evidence for each of the criteria; if there is a tie in your mind, he does not satisfy the burden; so that is a little background; you have the criteria and the first one I am going to talk about is the first prong:

Whether the use required is a permitted use in the zoning district; you should deny the application because none of the proposed use, which is the firing lane, a retail store and education; none of those are permitted and none are permitted by Special Exception either; I found it interesting in August we submitted a letter to you explaining this; we pointed out that the applicant was proposing 3 uses - firing range, retail store and education; we said those are 3 primary uses aside from the fact that each of those are not permitted in the Ordinance if they need a Variance the Ordinance does not allow for multiple primary uses; so what the applicant has done, they have acknowledged that I believe, they have instead said, "Oh, OK, well, there is going to be one primary use and that is the firing range."; then there is going to be accessory use, the retail store – the 2400 square foot retail store - and then there is education sort of that doesn't really count; so let's start then with the firing range.

Firing range: primary use, indoor gun range; what I have said was in the August letter and a September 12th letter I sent the board before the last meeting so you could review and go back to that; I said it in more detail; but between the first application and this application the zoning ordinance was changed in a way that now makes any argument that an indoor firing range is permitted, invalid; prior, when the first application was submitted the ordinance had a section that allowed for, by Special Exception, Other Amusement Recreational Services, Indoors; so the "Indoors" qualifies the other amusement recreational services; the ordinance has examples of that; that was changed last March to read: Other Amusement and Recreation Services, Event Venue and Functions Services Indoor; me reading this, I don't live in Warner so I don't know what people intended but that change is now the qualifier is not just that these things have to be indoors but they have to be "an Event Venue or a Function Service" indoor and as a result of that it is no longer permitted so that's put there by Special Exception; even if you could argue that the event frame restriction did not apply the only way they're able to somehow try to argue that an indoor firing range fits in with another amusement is to look at OSHA, a Federal Regulation; I think originally his application looked at an insurance list; first of all your ordinance does not incorporate OSHA; your ordinance is what it is; so you need to just look at your ordinance; I would say if you were to pull in things from OSHA, from other places, that is like amending the zoning ordinance; you are incorporating things by reference; I don't think that is proper; and in fact, the fact that someone is going to go to that great length to try to pull in, to argue that, demonstrates why this is not a permitted use; I think you can look at this too, you are tasked with interpreting the zoning ordinance; and do you think when the ordinance was passed people talked about other amusement and recreation; they were even thinking "indoor firing range"?; the answer has got to be "No"; if they did, I am sure they would have addressed it differently; I am sure it was not on anyone's mind and was not contemplated as part of that; fast forward to firing range: as a result they need to get a Variance because it is not permitted.

The Retail Store: what they are saying is the retail store is an "Accessory Use"; applicant has sited a case in Salem that went to Salem NH zoning Board, to argue why the retail store should be an Accessory Use; that case does not apply because that case interpreted the Salem ordinance where they did not have an Accessory Use provision; your does; you have a specific provision that deals with Accessory Uses; so if we're going to talk about whether the retail store is an Accessory Use then look to see if it falls under what is permitted as an Accessory Use; there are 4 things for Accessory Use: 1) Home Occupation 2) Day Care or Kindergarten 3) Accessory Professional Offices of a Licensed Dental or Medical Practitioner, Real Estate Broker or Lawyer in an existing dwelling 4) An Accessory Building such as a private garage, playhouse, green house, tool shed, private swimming pool or similar accessory structure; not even close to a retail store that sells guns and ammunition; so it is clearly not an accessory use; and even if it were – again, I'm not arguing it is a primary use so I think that is not why they wrote it; if it was I explain why it's not – even if they try to argue it is a principle use the only category it would fit under is possibly is General Merchandise and I explained why that is not the case; I characterize this as a specialty item and the fact that it is so highly

regulating, so dangerous, the setback requirements with special statutes shows why it is a Specialty Item; so they get a Variance for the Retail Store; it's not an Accessory Use and it's not a Permitted Use; that leaves the third use, Education.

Education: what the applicant said with respect to education, in Attorney Puffer's letter of September 12, 2017: "The firearms classes are an adjunct to, are subordinate to the principle allowed use, the firing range"; the definition of Accessory Use in your ordinance is a use that is, "incidental and subordinate to the principle use of the structure"; so he just described it as an Accessory Use, right?; again, we just went over Accessory Use criteria and there is nothing in there about education; what it has to be – what they try to do is say, "Well, it's just a normal part of a firing range"; that's not good enough; you have to find that it is actually a permitted use in the ordinance; and, much as they try to down play it, looking at the Union Leader article from last week, October 30th, Mr. Miller is quoted in the paper as saying why he chose to make his firing range public, "So it can be focused on the education aspect of the range"; and there is nothing I can see to prohibit people just coming for the classes; "There's a class Tuesday at 8 – come to the classes", it is not necessarily done at the same time or with the firing; it is a separate use; so that use is not permitted in the ordinance either by right or special exception; therefore, they need to get a Variance for that as well.

I would also argue again that these are multiple principle uses and that in and of itself, your ordinance does not permit multiple principle uses so they need a Variance for that; so what I just went over is the first fate you need to decide in whether or not to grant a Special Exception, is to whether or not the use is permitted in the ordinance; and it is not therefore it requires a Variance.

Second Criteria: they have the burden to demonstrate that "The requested use is essential or desirable to the public convenience or welfare"; we talked about how this is being shoehorned into the lot; 25 feet away; there are some general statements made by the applicant about generally how a firing range is a "good idea"; what we're talking about, when you are looking at this, you have to look at it not in the abstract; whether of not firing ranges are a good thing in general; but whether it is good for *this* lot; for *this* location; it is just too narrow' we talked about because it is so narrow, because of the way it is laid out you get all these problems; you get the noise, environmental issues, the fire hazard 100 feet away, the setback issues that we talked about, the property value effect – actually that would apply if it was in another part of town but I think looking at this, my feeling has always been that really what the town should do is propose an amendment to the zoning ordinance, let the whole town weigh in on it, find a part or place in town maybe a little more remote, certainly not 100 feet away from a high tech business, not 300 feet away from someone's house and certainly not 25 feet away from picnic tables.

Third Criteria & Fourth Criteria: they have to demonstrate that it will "Not impair the integrity, character of the district and adjoining districts nor be detrimental to the health, morals or welfare"; this is the big one, right?; not detrimental to health, not impair the integrity of the district; so as far as "integrity of the zoning district", property values, they are going to take a hit when this goes in; you have the reports that show that to you; you drop this in here and the value of these properties are going to go down.

We know that people are going to hear gun shots notwithstanding the highway in the background; it is going to be very obvious; with respect to Madgetech, when the proposal first came and Norm was not able to make the original meeting; he was overseas trying to get some customers for his Data Loggers; but the employees were very concerned because think about sitting outside at picnic tables, people coming in with loaded weapons; the applicant said at the last meeting, by the way, he is not going to let people come in with loaded weapons; how are you going to enforce that one?; I could see not letting people leave with loaded weapons but to prevent people from coming from their car – they show up at the building and there is a sign that says, "Remove your bullets"; it is totally unenforceable; ridiculous actually to make a statement like that; so these people who are sitting here, have every right to be sitting here at a picnic table,

playing volleyball, whatever they are doing and when they do people will be coming in all day long with loaded weapons; they are frightened of that; and I'd like to point out to you that one thing you are suppose to consider is the Master Plan; so your Rules of Procedure state that you will hear how the facts relate to the Town's provisions of the Master Plan; I'd like to point out that the Master Plan includes the following goal: "To support the existing business community"; I would argue that this is a direct attack on this business; a very important business in your town; the second largest employer.

So for all the background reasons I have given you, noise, environmental issues, property values, the fire hazard, it is detrimental to the zoning district; the last criteria which I think is the most important, the most obvious, is that this will be detrimental to the health and welfare of the public or to frame it more correctly, the burden is on them to demonstrate this will *not* be detrimental to the health and welfare of the public; they have to demonstrate that to you and I would urge you given that there is a safety issue involved, if you are at all in doubt, you should err on the side of safety, that is what I think would expect; but the evidence you have before you is overwhelming as to how this will be damaging, very damaging to the health and welfare of the public.

So we have talked about the fire hazard, the 75 foot setback - it is to close, the noise issues – it is to loud, environmental issues – it is to unsafe, the property values – it is to bad for the property values because they are going to go down; again, I would ask to err on the side of caution.

I have nothing else to add, would be happy to answer questions and they have not met the burden, it is not permitted either by right or special exception so they need to get a variance for each of their uses, number one and number two, even if you feel this is something they can seek from Special Exception, that they have fallen well short of satisfying their burden, and again, the final thing I'd like to say is that you have those expert reports, they are not refuted, there is no fire expert recorded to contrast the one we have from Mr. Nato, no noise report to contrast or hold up against the one from Erick Thalheimer, they do not have any environmental reports to refute what Mr. Stone, said you have nothing to refute what these experts have said about property values, so again, you will ultimately be judged by if your decision is reasonable and it will be reasonable if it is based on the evidence, and I think the evidence you have is very clear that it will be detrimental to the health and welfare and all the other reasons, by Special Exception you need to deny.

Acting-Chair: I have a question for you or Mr. Carlson, do you have any hazardous material at Madgetech?

Norm Carlson: I don't know.

Attorney Alfano: How is that relevant?

Acting-Chair: We are talking about hazardous materials in the district so it made me wonder if Madgetech has any hazardous materials.

Norm Carson: No explosives. We have Batteries, like watch -

Acting-Chair: You don't have any by-products, no lead -

Norm Carlson: No lead.

Acting-Chair: - no gaseous materials,

Norm Carlson: - no

Acting Chair: - nothing for electronics?

Norm Carlson: Nope. we're totally lead free.

Acting Chair: You don't have any OSHA responsibilities for containing any kind of waste?

Norm Carlson: We have a machine shop, oil lubricants go through the machine shop and a company comes and picks it up every month.

Acting-Chair: What is the waste?

Norm Carlson: Used oil.

Acting-Chair: Used oil?

Norm Carlson: Yes.

Acting Chair: Any other questions? Oh, yes, there is another one - do you own a gun?

Norm Carlson: No.

Acting-Chair: No? OK. Thank you.

Norm Carlson: I will say, I grew up on a farm. I had 3 guns. I did used to hunt a lot in Warner.

Acting-Chair: Oh - You did used to hunt. Do you believe that a guns only purpose is to kill?

Attorney Alfano: Excuse me....

Acting-Chair: I just want to know.

Norm Carlson: Well why else would you have a gun? They were intended or invented to kill people or animals.

Acting-Chair thanked Mr. Carlson and proceeded on to ask if the aggrieved abutter, the renter, on the Madgetech property would like to speak.

Amy Manzelli, Attorney with VCM Environmental and Land Law, Concord, NH, spoke as the representative for Sarah Lansil and Justin Carroll. Ms. Manzelli pointed to the location of the house on the display from Mr. Alfano saying Sarah and Justin live there with their 2 daughters; the house is about 318 feet from the project – proposed building; as noted on the plans there is no fence that encloses their yard area, they and the children are free to recreate right up to the property boarder; that would put them within 25 feet of the proposed building; concerns have been articulated by Attorney Alfano on behalf of Warner Road Holdings and Madgetech and we echo those concerns; we would like to incorporate those concerns by reference on behalf of Sarah and Justin; we presume that you are going to hear a few more concerns tonight; I am not going to belabor all of those points but would like to hit a couple of them.

The fact of the matter is, accidents with firearms happen; consider the 51 year old, Sandown NH resident who was killed in a hunting accident in Brentwood NH this Sunday evening; it is an inescapable fact firearms accidents happen; I do not mean to belabor the obvious point tonight with respect to firearms, sometimes, people do bad things; it is not a question of whether an accident will happen; it is not "if", it is "when"; when that time comes, Sarah and Justin and their two daughters will be 25 feet beside this proposed use.

The requested Special Exception is not lawful or reasonable for this property; we respectfully request that when the board votes, it vote to deny the application; I also will welcome questions and thank you for your time.

Acting-Chair asked if the board members had questions. Hearing none, she said: She was at the hearing when Mr. Carlson received a Special Exception for the rental property; one of the reasons he stated for wanting the rental property was for security for Madgetech; do the clients provide security for the property?

Attorney Manzelli said she was not aware of those arrangements and said Mr. Carlson or Sarah or Justin could speak to that. Mr. Carlson said he was not sure what the question was. Attorney Manzelli said the Property Manager was present and could speak to the arrangement.

Shashonie Doody, Property Manager: The tenants do provide security; they are there, they work opposite schedules; they are there basically 24 hours a day; they call me if there is an unusual vehicle that should not be on the property; I call Norm, so technically, yes.

Acting Chair thanked Ms. Doody and then asked if either of the two tenants of the property own a gun.

Attorney Manzelli: With all due respect Madame Chair, I do not think that is relevant question to the Special Exception criteria.

Acting Chair: My reason for asking it is because there are potentially going to be guns on the premises next door and it seems if they are worried about guns in proximity to children it seem a logical question to ask if they own guns.

Attorney Manzelli: The tenants are not seeking any relief from the board.

Acting Chair: Then they are not going to answer the question?

Attorney Manzelli said she would like to confer with her clients and let them think about that.

Acting Chair asked if there were any other abutters or anyone directly effected that would like to speak.

Debra Hayward, Warner resident on Route 103 East, about 2/10th of a mile from Madgetech said: I have a big concern about the lead issue and the education about lead especially in this area and this community; I was going out after a petition, talking to people and thinking "this is a good thing"; come to find out, these people have no idea what the statistics are; we have 16,000 shooting ranges in the US; only 221 are actually inspected; that should tell people something; with the fatality rate of the actual lead poisoning because of the elevated lead and we can only go 10 micrograms in our body before different things like organ damage begin; fatalities; there is a lot of it on social media for people to read; my main concern is my community; my family goes back here over 100 years; I'm not willing to allow lead poisoning to come into this community to affect my friends and family just for recreational reason; if a filter fails, there is so much responsibility on the people who want to come in and put a range here; they need to take a close at what they are doing to this community. Thank you.

Acting Chair said speakers will be heard in the order on the sign up list and then at the end, time will be allowed the abutter and the applicant to briefly give any other information they wish to give.

Members of the public who spoke:

Andy Bodnarik: I sent an email; brought of copy of same; Warner resident for 30 years; opposed to granting a Special Exception; since this is a "de-novo" proceeding I am requesting the following documents be added to the record:

- 1) Approved ZBA 2017 Meeting Minutes from:
March 8, April 12, May 10, May 24

If the board has not already done so, I request

- 2) The applicant be required to file a new application that lists both the current applicant and the current owner of the property so that a clear chain of custody and responsibility can be established in this matter

note: multiple changes of ownership have occurred since the original application was submitted on February 16, 2017

If the board has not already done so, as I have previously requested, I ask the board to request

- 3) An accurate engineering plan, building plan and site plan which includes the accurate location of all entrances and exits of all buildings the applicant is proposing to construct. It is my understanding that the plans shown at the ZBA hearing on October 11, 2017 were not accurate and a change was made to the building. It was said that a doorway on the building itself had changed.

Since this is a "de-novo" proceeding I request

- 4) the Zoning Board of Adjustment hold a joint hearing with the Warner Planning Board. The applicant indicated at the October 11, 2017 hearing that at least one change on the planned building entrance had occurred and the ZBA announced and voted the potential regional impact on a gun range at Map 3 Lot 33

5) Diagrams already provided indicate that approximately 30 parking spaces will be constructed. Why isn't the ZBA requiring the applicant to apply for another Special Exception for a commercial parking lot per Warner Zoning Ordinance, page 39, item 22?

I am opposed to the gun range because the requested use is not essential; police protection, fire protection, emergency services, clean air, clean drinking water are essential; another gun range in Warner is not essential when one already exists; other numerous opportunities for training and purchasing firearms already exist as follows: gun range at the Warner Fish and Game Club; fire arms training at New England Tactical, Hopkinton; Pat Trap, Western Avenue, Henniker; Wilderness Adventurers, Hunting and Anglers Club, Hillsboro; Manchester Firing Range, Brown Avenue, Manchester; Flint Box Shop, Contoocook; The Warner NH Gun Store – which I understand is referred to as, “War Box” - a retailer of guns, ammunition and self defense equipment; Marshall Firearms, Boscawen; The Barn Store, Salisbury; Morse Sporting Goods, Hillsboro; Lewis Firearms, Bow; Riley’s Sport Shop, Hooksett, Shooters, Hooksett.

I am opposed to the application also because it will impair the integrity of the district and the adjoining district; for example: decrease property value; it will be located to close to Interstate 189; it will have a negative regional impact. Thank you for your time.

Acting Chair thanked Mr. Bodnarik.

Faith Minton: Resident for 40 years; urging you to vote “No”; have a few notes - have sent a number of emails; agree with Mr. Bodnarik; do not feel that range is essential or desirable to the public convenience or welfare; there are other opportunities in the area; no guarantee of the environmental impact – vote “No” due to the environment concerns; definite potential to lower property values; friend that works in the Manchester area who has clients who have homes near gun ranges in the state and they have trouble selling their homes – this is something that is really happening, it is not just a study; many other issues but covered them in my emails so won’t go on about them; urge the board to vote “No”; something that is not needed for our community as you can see by the people who are here; many have sent emails; many are concerned; the applicant does not have experienced in the area as he said and I feel that it is not anything that will be beneficial to our community; Thank you. Acting Chair thanked Ms. Minton.

Pam August: Resident for over 40 years; live about 3 miles away from the proposed project site; do not see how a construction of a gun range - indoor, outdoor, retail gun store - enhances the reason people move to Warner; I have children who own guns; I am not opposed to the ownership of guns; I am opposed to what happens to people when they have to many guns; I don’t see that it is with keeping with the town of Warner so I oppose it. Acting Chair thanked Ms. August.

Nancy Martin: Like the previous speakers I have lived here a long time – since 1974; have sent the board a letter; at the October 11 (2017) meeting heard Mr. Carlson’s attorney say something about the fact that this proposal does not meet our building codes because of the explosive nature of the ammunition that will be contained; if it does not meet the buildings codes, I think we should deny it. Acting Chair thanked Ms. Martin.

Andy Stone: I am from Hopkinton and do not want to weigh into the Warner decision unless it is appropriate; I am here due to the regional impact; I have been a member of the shooting sports community for about 20 years not Hopkinton but around the country; the number one thing that I have seen in ranges I have been to is safety; as soon as someone does something that is not safe they are kicked out; I do not have a problem with a facility with the proximity of the Hopkinton schools; I myself am not afraid of the facility; I think it would be helpful for people, the public, to learn safety with firearms; when someone walks into Wal-Mart and buys a gun, where do they go next? They can not just join a private club – they need a class; if there is a public facility where they can get safe instructions I think that is overall a benefit to NH; Thank you. Acting Chair thanked Ms. Stone.

Dennis Inman: I have been a resident of Warner for a long time; this is a 5-minute university for everyone here who do not know firearms and ammunition; ammunition does not propagate itself when burned, shot at or crushed; it is not going to detonate all in one big boom; you can shoot packs of ammo with another rifle and nothing is going to happen because ammunition does not propagate itself; as far as having a big explosive hazard is not true; having a facility that can train and educate people with firearms is a huge plus; the Brentwood accident spoken about was probably a case of people shooting in an area where they are not suppose to and someone became a by product of that in not a good way; I have been to the other ranges, Manchester, you can stand in the parking lot and you can not hear anything; and this proposed construction is better than that; not only that, but the data, if you say something is not true and you say it with confidence – it isn't true; the 300 feet from a building, an occupied building is for firing outside, hunting, as per statutes; that is misleading data. Acting Chair thanked Mr. Inman.

Michael McManus: I am a Sutton resident with property in Warner which is down the road from the firing range; I am in favor of this; I believe we need to be an educated society; there are to many people who are afraid of guns because they just do not know what a firearm is; years ago, when I grew up in Hopkinton, there was a shooting range directly across from the high school; when I went to school there, during the day people would shoot; obviously it is closed with apartment houses there now; it was not an issue then; that was an outdoor range; this is an indoor range, where, as Dennis stated, you can go to Manchester, Belmont – in Belmont, right next door to that shooting range is a Day Care, abutting the same building. I am in favor of this and think it is a great idea. Acting Chair thanked Mr. Stone.

Janet Ward: Hopkinton resident; I understand what you are saying about education but a resident of Warner made it clear with a long list of options people have, places to go; there are other educational facilities for guns; I am only going to talk for 2 minutes but I am standing here looking at the stage and I have been a resident of Hopkinton since 1978; in 1980 the Kearsarge Theater Company did Alice in Wonderland; my daughter was Alice so I have great affection for the Town of Warner; because of that I am grateful the state of NH has regulations talking about Regional Impact; I believe that was a wise regulation because neighbors – Warner and Hopkinton – have very good relations; we care about each others town; and you have a stack of information from the Selectboard of Hopkinton explaining why this particular gun range and store located in this particular location is definitely not essential or desirable to the public convenience or welfare; it will impair the integrity and character of the adjoining district; although you felt comfortable with the firing range across from the high school.....

Acting Chair asked Ms. Ward to direct her comments to the board to avoid any “back and forth”. Ms. Ward continued: - that was a different era; the proliferation of guns was not as intense as it is today; to say this or that was true in the 50's or 60's, it was a different time; as has been stated, there will be a negative impact on my community; this gun range and store are in closer proximity to our schools and to the police and fire departments; if an unhappy incident does occur the first responders will probably be from Hopkinton; the real estate values as has been stated are going to be negatively impacted; the recreational use of that area which has been part and parcel of my life will be impacted; there will be lots more traffic and a noise difference; I attended the Hopkinton Selectboard meeting where residents spoke about coming to live in NH, specifically Hopkinton and nearby towns because of the quiet safe nature; to put this particular facility in close proximity to our border it is not the neighborly thing to do; for all the reasons that have been stated I ask that you deny this project. Thank you. Acting Chair thanked Ms. Ward.

Linda Donovan: I am hear to speak about the Variance but I am not in favor of the gun range.

Laura Johnson: Resident of Hopkinton; I wrote something down to say for my husband and I but I would first like to say I would not be happy with a gun range across from the school: a lot of people moved here because of the schools and that is why this is a big concern for a lot of us; I do not think this application has

shown that it warrants a Special Exception; it certainly is not necessary; if it is desirable is debatable; the majority of Hopkinton residents that have spoken or written to the Selectboard have asked that the business find a different location that is further from our schools and town center; I have not been convinced that our residents don't have to be concerned with the environmental and safety issues regarding the facility in the short term or the interim or the long term. Thank you. Acting Chair thanked Ms. Johnson.

Dan Watts: I am a new comer – I have only been here for 17-18 years; one of the points about guns and I don't know if any of you have noticed but in Market Basket the other day I walked by a gentleman with a holster on his side with a pistol in it; this is an open carry state; you can find guns any where; I would feel much safer to see someone with a gun at a gun range because I know they want to be responsible that is why they are going to a gun range; a lot of us, myself included, shoot guns outside; that is what I do on my property right now; I have it set up as safe as I can but I would much prefer, especially in the snow, to go to an indoor range; to shoot indoors and also so that I can learn from someone and improve my skills; I am not a bad shooter but I would like to become better so that I can use it for hunting and such; I also shoot just for the fun of it – I like target shooting; I work in Manchester so it is not that difficult to go to the gun range there but I would rather not go after work but come home, have something to eat and go somewhere here where it is close to home; just something – I have been researching as I am sure many others have too, and have found out that women are a huge demographic for gun ranges now; I think that is good that children, women, someone like myself who did not grow up in a family that hunted; I urge you all to support this; thank you. Acting Chair thanked Mr. Watts.

Chuck Austin: Only a 10 year resident in Warner; I really have not had a position on this until just recently; I am not a gun person but I felt that my personal feelings on that should not supersede other peoples ability to safely use guns or a small business owner to make a living but I came to the conclusion that now is not the right time for a gun store or gun range in Warner; really, the reason for this is that Congress in Washington has been unable to pass the simplest of common sense gun laws even though they have had ample reason to do so as we have all seen and they have had over whelming support from their constituents; I just think that if Congress is so dysfunctional that they can not pass these laws then it does not make sense for us to invite that into our town; I do not think it is safe or proper to have a gun range or shop in our family friendly town. Acting Chair thanked Mr. Austin.

Michael Biagiotti: Resident of Warner; I am in support of the application and against the ridiculous assertion that a guns sole purpose is to kill; I will give you an example of the educational aspect - my son who is here is in a youth shooting group; about 1 hour away; took us a long time to find it; it teaches proper gun usage and safety and skill instruction and things of that nature much like what sounds will be offered at this facility; the kids that are involved with this, young men and women, are the most responsible kids you would ever want to meet; it is really great to see them use this tool to develop leadership and responsibility just like any sport, that is truly what a parent wants, whether it is soccer or baseball, it is these other attributes; my older son has found that firearms is a way to do that; as far as desirable and being an asset, I feel that having that here would be an asset to everybody here. Acting Chair thanked Mr. Biagiotti.

Sarah Maltson Dustin: I live on Dustin Road, Contoocook; I have 2 brief points as to the impairment of the adjoining district: it is an R4 district in Hopkinton so it is zoned for open space, conservation, very low density residential use, it is a country road in a forested area; it is really difficult for the applicant to meet his burden to prove that he does not impair a little forested neighborhood by putting a gun range with lots of traffic, parking lot and signage right next door; when it comes to the desirability of the proposal, honestly, if you set aside the legal-ease it is what it boils down to: Do people want this? Do people think it is good for the community? I think you will see when you read the Hopkinton letters there are at least 2 or 3 to 1 opposed to the proposal; that is about the same ratio that you have heard tonight; that was true of every

Hopkinton meeting; I think that people are telling you they do not want this; this is not good and I hope you will take that common sense approach. Acting Chair thanked Ms. Dustin.

Becky Whitley: From Hopkinton and would like to thank the board for hearing us, we truly appreciate it, the neighborly aspect of this and how open the board is to hearing from us; I also sent an email so I am not going to restate the points in my email; I did want to make the point that Laura had made; people move to Warner and Hopkinton because of the schools; that is exactly why I did; I used to live in Concord, I have a 4 year old, I moved to town for the schools; I want to draw your attention to a letter in the packet from the Hopkinton school-board; in that letter the school-board identified they had spoken to the administration, teachers and the general consensus was that we are not comfortable with this; so again, this range, regardless of its educational value is going to be less than 1 mile from children; if we have children and teachers feeling uncomfortable to go to school, regardless if it is true, it is their perception; I do not want my kid going to school every day worried that they will have to run by a gun range during track practice; that is a really important point; the overwhelming majority of people in Hopkinton, 80% of the people who weighed in with the Selectboard, took the time to attend meetings said, "We are really concerned about this."; we just do not feel this is good for our community. Thank you. Acting Chair thanked Ms. Whitley.

Clyde Carson: Resident Kearsarge Mountain Road, Warner; I do not have an objection to the things the proposed develop wants to do; I think some of them are good; my concern is that it does not meet the test of being desirable for the town of Warner; the fact that we have an abutter who is a high tech company; has, by my calculations, one of the higher payrolls in Warner; and we have that company saying, "This is not good for my business"; I think when we look at our existing businesses what does it tell them if we do not take their concerns into account?; it sends a bad message, whatever the exception is; it sends a bad message to that business and a bad message to other similar businesses that might want to move into town; on that I would say it is not in the best interest of Warner to approve this exception. Thank you. Acting Chair thanked Mr. Carson.

James Gaffney: I live in Warner; I just want to offer some information so hopefully you have the option to sort out from other; I spoke about 3 months ago to Mr. McLoud, previous owner of Manchester Firing Line, Manchester, he was owner from the current ranges construction until he sold it a couple years ago; owner for better part of a decade; in that period of time he indicated to me that he had almost 1 million people come through the range without a single incident; the range is located across the street from a ball park; is within a short distance of at least one school; there are all sorts of businesses that operate in close proximity to the range; there are no issues with that range; the proposed range is in a commercial district in Warner; the specs that have been proposed far exceed that of the construction of the Manchester facility; I do not see any problems with what is being proposed; the other issue that has come up is that there has been concern about property values; this is a commercial zone; it is not a residential zone; the studies that I believe have been presented spoken about anecdotally refer to outdoor ranges that were operating for long periods of time in unzoned areas over residential areas where homes have crept in upon those ranges; those are fundamentally different circumstances than an indoor range operating in a commercial district; I hope that you take some of those details into consideration in your decision; thank you. Acting Chair thanked Mr. Gaffney.

Kimberley Edelmann: I am a resident of Warner on Kearsarge Mountain Road; I am not able to speak about the completeness of the application in terms of design but I will speak in terms of support: I am a gun enthusiast; I always have been; my dad was a marksman for the Navy so as a child I was taught gun safety and how to shoot; I own a horse farm; I live on a hill; I do not like to shoot on my property – my neighbors do not like the sound; as a selectman I can tell you that a lot of people do not like the sound of gunshots; this gives us a place to shoot; Sunday I am going to Manchester to shoot, indoors, and it is not heated; I would be a customer of this gun range; if it does not get built in Warner I know Hillsboro has already said they

would be interested to talk to Eric; it is a good business opportunity for the town, for income, it is a commercial business; I am in favor; I know it is come out to a meeting when you are against something; it is very hard for people who are supporting it to show up. Acting Chair thanked Ms. Edelmann.

Acting-Chair said that alphabetically of the 2 people that asked to speak last, Alice Chamberlain will speak first.

Alice Chamberlain: there are a couple of things I want to re-iterate – I won't go over my written testimony; first of all I think you have a decision to make about whether this requires a Special Exception or a Variance; I believe strongly that all three uses require a Variance; the application does not – our zoning ordinance does not cover the uses this applicant has applied for; and I do not believe they are otherwise ascribed in our zoning ordinance; that is a fundamental decision you have to look at; it is a legal decision; I think it is important that you start with that; in my recommendation, this application needs 2 Variances; the second thing I would say is that I think you should de-couple these uses; there has been a lot spoken tonight about the gun range and I would like to speak more specifically about a gun store; should you decide that you move ahead with this application under a Special Exception, I find it very difficult to believe that bringing a gun store to Warner would meet the requirements of a Special Exception; there is no way it meets the educational requirements the applicants talked about, the social contracts that he claims to have bringing the education of guns to Warner and the region; a gun store is a use that is detrimental to our community; it brings people into the community that want to buy guns; it brings more guns into our community; I hope as you move forward you will de-couple these uses; the applicant has said in the first meeting that the gun store was a lost meter to the range; I don't know if that is true but if it is it would allow you to think about these uses separately; I think that is very important; in terms of your responsibility under our zoning ordinance, you have significant discretion in how you address the application; it is a land use issue but you also have the responsibility to think about the welfare, health and safety of the town; I have been here like many people for 40 years; I have seen the difficult issues that the zoning board has addressed and many projects that it has denied; also in that time I have talked to a lot of people who have moved to Warner and they have never asked, "Do you have a gun range? Do you have a gun store?"; that is not what they care about when they think about where they are going to live; it is not what the people who moved here 40 years ago and live here now care about; people care about good jobs; Norm Carlson provides good jobs; he has been a steadfast employer in Warner; he provides career jobs; I think he has expressed through his attorney and his comments that he feels that this use of the land next to him will have a negative impact; we are squeezing out a really good employer to squeeze in a gun store? I do not think that makes sense for the future of our community; I hope you will consider all the comments that you heard tonight as you move ahead with the Special Exception but foremost I think the applicant needs a Variance for his 3 uses; thank you. Acting Chair thanked Ms. Chamberlain.

Keith Hanson: I have a couple props: nothing that will go "Bang", nothing that is alive; I am a part-time resident of Warner; that will change in about 2 weeks; I am a full time resident of Florida; before I speak, I will state my credentials; among other things, I am a licensed and certified Law Enforcement Firearms Instructor, SWAT Instructor, Tactful Medicine or SWAT Med Instructor, Active Shooter and Counter Terrorism Instructor for the 2 Federally Recognized Federally Certified Educational Bodies: this coming Sunday, Chief Cahill and I are co-instructing an active shooter response at the Sunapee Police Department; I'm also an expert witness in the Florida Court System, primarily in the 4th and 20th judicial circuits for the State of Florida and I am co-educational Director for Florida Training Carriage, the largest gun rights lobbying association in the state of Florida.

Lets get right to why we are here; fear, speculation, conjecture, I think, I wish, I hope – that is what I hear; I hear a lot of people who don't know anything about firearms but they are afraid of them; they are afraid of them because of the Emmy winning performance that has been put on by the abutter and his council; you

asked Mr. Carlson if he own guns; I'll answer that for you; he does; he told me this; I am also the host of First Look on WMTK, WUVR and the Keith Hanson Show; I have had Eric Miller on my show on a number of occasions; in the interest of fairness, equal time, I have extended the same invitation to Mr. Alfano and Mr. Carlson -

Mr. Alfano interrupted and said that was a "false statement" and he had never been invited on the show. Mr. Hanson said he was not addressing Mr. Alfano. Acting-Chair quieted the reacting crowd and told Mr. Alfano he would have a chance to speak.

Mr. Hanson continued: I have sent invitations to both those individuals to come on my show and discuss the issue; Mr. Carlson has had extensive conversations with me on the phone but not on the show; where he has told me he is a gun owner; he is not opposed to owning guns; he has an issue with the firearms range being next door to him; over the course of one of the conversations I asked him, "This is a commercially zoned property. Are there any other businesses you would oppose having next door to you?"; obviously, directly off interstate 89, exit 7, that is a highly desirable area; "Would you have an objection to a gas station?"; "No", he would not have an issue with a gas station there; yet I hear all of these objections based upon noise, traffic volume, density, propensity for crime, sound and environmental pollution; do we want to look at the statistics on a gas station? ; first of all – traffic density; how many people realistically are going to be visiting Mr. Millers gun range on a daily basis?; if you look at the density of people visiting the Manchester Firing Line and look at it proportionately it would probably be about 8-10 cars per hour; that is an unacceptable amount of traffic to the abutter; but would not have a problem with 90-100 cars per hour going into a gas station?

Let's talk about the environment; we are talking about on average, statistics from the National Shooting Sports Foundation, incidentally, located in Newtown CT, on average, a person who fires a gun recreationally will have residual quantities of up to 1/100th of a micro-gram of residual lead primarily from the lead "stiphenate primers" contained in center fired or rim fired cartridges; how much is that? An infinitesimal amount; you could not see it with your eyes.

What Mr. Alfano does not tell you is that – Mr. Hansen held up a 12 gauge shotgun shell for the public. He said: the 12 gauge shotgun shell contains 1ounce of shot; Mr. Millers lot, 3 acres, let me tell you about another 3 acre parcel – in fact, a 3.38 acre parcel of property - on Uptown Road in Mount Vernon called the Purgatory Falls Fish and Game Club which Mr. Alfano happens to be the lead council for; he will tell you about all the environmental issues that he has and his abutter has with this proposed gun range which by the way is indoors; has state of the art lead containment and abatement procedures and equipment; lets talk about the Purgatory Falls Fish and Game Club that Mr. Alfano represents; I ran some basic numbers; on a 3.38 acre parcel property they average 35 trap and skeet shooters per week; in a conversation with the National Shooting Sports Foundation a very conservative estimate would be trap and skeet shooters per visit shooting approximately 25 12 gauge shotgun shells; each one containing 1 oz of shot; which is also conservative because most trap and skeet shooters shoot shells that contain 1 1/8 shot.

Mr. Hanson held up a clear plastic bag containing 1 pound of number 8 shot and asked the members of the audience to pass it around. He continued: on a 3.38 parcel of property, at the Purgatory Fish and Game Club, the same piece of property that the abutter's council represents legally, approximately 4800 lbs of lead are discharged directly into the environment; that is 1 ¼ tons of lead shot that is discharged outside, well within range of houses; when a person shoots trap and skeet they are typically shooting at a 45 to a 60 degree angle; average distance of travel for that lead shot is approximately 1000 feet; so how does 4873 lbs of lead shot – and that is a conservative number of trap and skeet shooter not pistol and rifle shooters which could very easily represent another 4000 lbs of lead per year; that is put directly into the environment at the facility that Mr. Alfano represents.

So how can we have an intelligent conversation and an ethically responsible conversation where you have somebody who is talking out of both sides of his mouth? I'm sure if Mr. Miller had hired Mr. Alfano clearly Mr. Alfano represents a gun range and is more than qualified-

Acting-Chair said Mr. Alfano is not on trial. Mr. Hanson said he understands that and what he is trying to get at is the intellectual honesty and ethical honesty about this conversation; we are talking about residents in a rented home that are 318 feet - that are concerned about traffic coming and going into Mr. Millers gun range? What about the delivery trucks that are going back and forth to the property? Is that intellectually honest? You asked Mr. Alfano if his client has dangerous chemicals or dangerous products on the property; all I have to do is go to the Madgetech website: madgetech.com/batteries.html; what do I find?; a wide assortment of lithium batteries not lithium ion batteries but "lithium" batteries; do you know what happens when lithium batteries are exposed to water?; they are explosive; they release hydrogen gas which is highly flammable; unlike the cartridges that Mr. Miller would have in his store because if that were the case you would not be able to ship ammunition commercially with simply an "ORMD" sticker which is an acronym for "Other Restricted Materials Domestic"; it would have to be labeled "Explosive"; so if we are going to have a conversation that involves honesty you have to ask yourself whether the evidence you are being presented is honest; thank you. Acting Chair thanked Mr. Hanson.

Mr. Hanson held up the bag of lead in the direction where Mr. Alfano was sitting and said he could have it to give to his clients. Mr. Alfano responded with a loud, slow clapping of applause. Acting-Chair quieted the interaction and asked Mr. Alfano if he would like to say anything. Mr. Alfano replied "Yes" and Acting-Chair said before he does, she would like to know if there are any other members of the public who wish to speak.

Carol Barow: Resident on Kearsarge Avenue, Hopkinton; down the road from the proposal; I think it is wrong of Warner to put a commercial district next to a rural road; people are riding horses, properties are large; people are used to a quiet place; environmentally there is a danger; in a perfect world there would be no problems and no problems with people with guns; this is not a perfect world; it only takes one; I am already uneasy owning that property with the thought that this will be here; we know that 99% of gun people are ok; most of the time things go ok; we have already had an environmental problem on the road with MTB; everyone knows that they should not dispose of gas on their property, well, it was disposed; it leaked into all of the wells on Kearsarge Avenue; it did effect the property value; if these things are not disposed of properly, it does not take much lead to poison water; I think you better had really look at this issue may be not from all the theoretical laws but the fact that it does not belong there, not next to a rural road; if you really think it does then you should close the road off at the area of Warner and Hopkinton; I don't think YOU would want to live on that road with this coming to Warner; it's really coming to Contoocook; we don't want it. Acting Chair thanked Ms. Barow and asked if anyone else wished to speak.

Sara Mattson Dustin: I feel there have been a lot of fear arguments from the other side; Hopkinton residents have been to a lot of meetings; heard lots of people speak; I live in Contoocook that is why I am so close to this; it really bothers me; it is a "location" issue; not a fear issue; I think that is a poor argument to make; thank you.

Mary Watts: Warner resident; same as this man over here – pointing toward her husband Dan, nearby – we live way out of town, very rural; when we first moved here, I was terrified; because every one of my neighbors target shoots; I had 2 small children and was afraid a stray shot would hit one of my children; I was terrified; it was a dilemma; I had a very good friend take me into the Manchester Firing range and teach me how to shoot a gun; I am still terrified of guns but I know how to shoot one if I had to; if I picked one up I know how to check the safety; and that is most important thing the shooting range gives to this

community; it takes away the fear; it helps people like me survive in a place like this. Acting-Chair thanked Ms. Watts.

Michael McManus: South Sutton resident; I am speaking in favor of the range; I believe this is a fine location and it would be beneficial to the residents of Warner and surrounding towns; there are hundreds if not thousands of people who live in our community that own firearms; they want to be responsible gun owners; want to go to a place where they can train and do it safely; many do not have the option to shoot in their backyard; I believe an indoor gun range would give them that opportunity; I truly believe the applicant has done his work; he has provided very good and clear information and I would just like to speak in favor of this. Acting-Chair thanked Ms. McManus.

Shashonie Doody: Warner resident on Route 103, near the I-89 exit 7; I'm sure everyone has heard this before: guns don't kill people, people kill people; I can not help feel the location is so wrong; it is going to effect – people who have spoken personally to me about being "pro gun range, exit 7" until I say, "ok, why don't you put it in your backyard?"; that is what it boils down to; not a fear of guns or pro-guns; it really boils down to the location; I personally spoke with – a lot of people and the biggest thing that I feel opposed to is the location; so if anyone wants to step up with their big properties to donate or sell a portion and bring the gun range there but I don't think it should be on that property; thank you. Acting-Chair thanked Ms. Doody.

John Leavit: One thing that I am afraid of is concerning guns is having a neighbor who is not trained to use one; anyone can go out and buy a gun but if you are not trained to use it you are a danger to the community; it is safety issues; Warner couldn't do anything better for safety issues than to offer a place for people who have guns in their homes to go and practice their shooting and learn the proper handling of a gun; I'm a guy who did not own a gun until I was 55 years old; I never had guns in the home; I got the permit in MA – and I was afraid of guns but I did not buy the gun to kill people; I'm sorry – most people don't; most people buy guns to defend themselves ; as I got older and weaker I realized I probably might need a gun at some point; I bought a gun in MA, got a license to carry and I learned how to use it; I started out afraid of that gun, now I am not; I respect it; so if you are really concerned about safety you will build a place where a shooter can go and practice and learn how to use a gun properly; not just buy it, put it in his house and pull it out in case someone comes into his yard that should be there; that is dangerous and that is when innocent people get hurt.

Acting- Chair said it is 9:00, this meeting needs to be Continued until the December ZBA Meeting so that the next case on the Agenda may be heard. Howard Kirchner asked the Acting-Chair if they would be closing the Public Hearing. She said she said earlier that she would give both the abutter and the applicant time to make closing statements. Mr. Kirchner agreed. She said she would have to keep the hearing open in order for them to do that plus the board needs to read all the correspondence from Hopkinton and Warner.

Mr. Kirchner asked if the the public will be able to speak if the Public Hearing is Continued until December? He said by closing the Public Hearing the public input is completed but the inquiry with the applicant can go on. Acting Chair said that once the Public Hearing is closed then the deliberations is only among the board members. She said if members have any other question to ask the applicant, which she does, then they do not want to begin deliberations until that is done. She said she would verify but she believes they can keep the hearing open and begin the next hearing with the abutter making their final statements. She asked members if that sounded amenable and polled each member with answers of agreement from all.

Attorney Puffer said he was conscientious of going over the allowed time tonight and acknowledged the hearing was not going to be closed tonight however, he wanted to say that there were a whole list of legal issues raised by Mr. Alfano and others tonight, whether it is an H1 Hazardous Building under the International Building Code, whether RSA 644:32 – Acting-Chair interrupted and asked if he could address

all of those in a letter. Mr. Puffer said he could and that is what he was going to suggest: he wanted to address the board with what he thought the legal issues were because they are threshold questions that need to be answered before the board even gets to the Special Criteria.

Acting-Chair said that is why she wants to give him another chance to speak again; she realizes that a lot of issues have been raised and there needs to be time given for them to be addressed. Mr. Puffer said he would like the opportunity in writing to address those legal issues and said then the board can consult with council if they wished on any or all of the issues. He said he has addressed some of the issues already in letters but there are additional issues raised tonight that are new and he would like the opportunity to summarize what those issues are.

Mr. Alfano said that to be clear, he would have an opportunity to respond to Mr. Puffer. He said under the ZBA rules the applicant goes first and then the abutter. Mr. Puffer said, "Absolutely". Mr. Alfano asked if a time frame could be set, if Mr. Puffer should submit it by a certain date before the meeting, not the day before the meeting, but in time for the board to read it – he added this was just a suggestion.

Acting-Chair said the time frame for correspondence to be received for the next meeting is always noon the day of the meeting unless stated otherwise but as early as possible is better. Mr. Puffer said he would like to submit it as soon as possible. Acting-Chair said the next meeting is scheduled for Wednesday, December 13, 2017 and the information packets are usually sent out to members the Friday prior. To the audience she stated that receiving anyone's correspondence by December 8 would provide that it would be included in the packet to members.

b. Continue Meeting/Public Hearing

Motion by Acting-Chair Janice Loz: Continue the November 11, 2017 Public Hearing to the next scheduled ZBA meeting, Wednesday, December 13, 2017, 7:00 PM, Warner Town Hall. Second by Barbara Marty.
Voice Vote. All in Favor. Motion Carried.

Acting-Chair said that the public was welcome to stay for the next case but if they were going to leave, to please do so quietly.

4. APPEAL OF ADMINISTRATIVE DECISION

a. Continuation of the September 13, 2017 and October 11, 2017 Public Hearing

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.

Approval to delay the Continuation of Case 2017-3 until the December 13, 2017 ZBA Meeting per verbal permission given during the discussion of time allotment for the cases on the Agenda which took place at the start of this meeting.

"Paul Alfano, Attorney representing Warner Road Holdings, Madgetech, said Case 2017-03 was his clients and he would be willing to postpone it until the next hearing, the driveway has already been built and it would leave more time for Case 2017-01-02 to be heard."

5. VARIANCE APPLICATION

Case: ZBA 2017-04 Variance

Applicant: Robert Nute and Heidi Holman

Property Owner: Robert Nute and Heidi Holman

Property Location: 115 Bible Hill Rd, Map 12, Lot 5

Description: Variance to the terms of Article VII/VIII, Section R3/OC-1 of the Zoning Ordinance; creation of two lots with less than the required road frontage for the district.

a. Review and Accept/Reject Application

1. Acting-Chair verified all fees were paid, notices were sent and legal publication published.
2. It was confirmed Alternate Members would continue to serve as Full Members for all cases on the agenda.
3. **Motion by Howard Kirchner: Accept the Variance Application submitted by Robert Nute and Heidi Holman, Property Owners, 115 Bible Hill Rd, Map 12, Lot 5, as complete. Second by Sam Bower. Hearing no discussion, Voice Vote Called. All in Favor. Motion Carried.**

b. Close Meeting and Open Public Hearing

1. Procedure Acting-Chair said they would hear from the applicant, abutters, the public, then rebuttals and questions from the board. She asked the applicant to introduce himself then read “pertinent” information from the application as written for the record and for the benefit of the public in attendance. She asked that he read the Article he is seeking a Variance from and then the criteria for granting the Variance as well as the letter he submitted explaining the overview of the request.

2. Presentation Robert Nute explained that he and his wife were applying for a Variance to the lot frontage so that they could sub divide their property into 2 lots; 48 acres; large “flag” shaped lot with an existing logging road; a small existing residence very close to Bible Hill Road; frontage is 330 linear feet; 250 linear feet of frontage required in their zone; requesting lot 1 include existing residence and barn with 215 feet frontage; lot 2 with 115 feet frontage.

Mr. Nute read the application information into the record: Applicant: Robert Nute and Heidi Holman, Property Owner: Robert Nute and Heidi Holman, Property Location: 115 Bible Hill Rd, Map 12, Lot 5, Zoning District R3/OC-1, Objective: To retain the existing antique home and barn and construct a new, single family residence on the second lot. Seeking a Variance to the terms of Article VII and VIII, Section R3 and OC1 with the following conditions:

1. Granting the Variance will not be contrary to the public interest because the proposed subdivision into 2 lots will not be contrary to the public interest because or injure the property rights of others because the proposed use and lot sizes are consistent with the neighborhood and surrounding area. The road frontage variance would allow the subdivision and the construction of a new residence using the existing logging road as access. The existing logging road is commonly used by residents on the road for deliveries vehicles and emergency vehicles turnaround. We would continue to allow this and build a finished driveway accordingly to support that non-conforming by neighborly use.

2. By granting this variance the spirit of the ordinance is observed because the site plan proposes a new single family residence to be created on the 40 acre lot within the R3/OC1 districts of the town of Warner. The use is permitted in both districts. It is assumed that the frontage requirements are intended to reduce over development and over crowding of houses in rural areas. In this scenario the new residence will be sited more than 1000 linear feet from the existing residence . In the photographs, #7, you can see the distance, there is a great deal of vegetation in between the proposed residence and the existing which maintains that separation and prevents over crowding in the neighborhood.

3. By granting the variance substantial justice is done because the general public will not be negatively affected because the plan is consistent with the character of the surrounding area and the existing informal turnaround will be maintained as a resource.

4. Granting the variance will not diminish the values of the surrounding properties because the variance will allow the development of a single residence on a large lot, set far back from the road and this use is consistent with the surrounding areas and does not pose a threat to property values.

5. The literal enforcement of the provision of the ordinance would result in unnecessary hardship. The unique characteristics of this property compared to those surrounding it is the shape. It is very long, very skinny and opens up to a 35 acre area in the back. The bulk of the land is more than 2000 feet from Bible Hill Road. The small historic home sits 30 feet from Bible Hill Road and based on the zoning regulations in R3/OC1, the lot size is large enough to easily support the development of an additional single family residence but the road frontage prevents us from doing so. The intention is not to have more than the one residence on the lot or ask for more homes.. this is merely utilizing the large lot for 2 residences.

Mr. Nute used the plans of the property to point out for the board the shape of the lot, the location of the logging road built by a previous owner who logged the property. He said he did improve the road because he was using it for access to the wood lot. He did some clearing and was going to have animals and start a farm but that did not work out. He said the single family residence would be built at the top of the hill for him and his wife, the spot is flat, buildable, has good soil. He would retain the existing antique home as a rental or sell it as a first time home buyer property.

Howard Kirchner asked if the larger frontage would go with the existing house. Mr. Nute said he appeared before the Planning Board for a Conceptual. He said they talked about giving the existing house the full 250 feet of frontage but looking where the logging road sits on the property, if the existing house was had the 250 feet it would require straightening the end of the logging road and that would put the driveway directly in front of the neighboring residence. He said he did not think that was a good idea so he proposed to have a variance on both lots giving the existing house the larger frontage but still not conforming. He added that there is a stone wall and a few trees to consider making it more sensibly to give the greater frontage to the lot with the current house. If he were to give the existing house the 250 feet of frontage, the logging road would be included within that footage and the Planning Board frowned on allowing a right of way in order to leave the road where it is.

Sam Bower asked if the driveway to the new home would be paved. Mr. Nute replied that only at a steep section so that they could climb that hill and maintain it in the winter with the rest of the driveway being gravel or stone dust.

Mr. Kirchner said he believed there were requirement for emergency vehicles and egress to conform to and Mr. Nute answered that he agreed.

Mr. Nute confirmed the logging road was on his property when asked if anyone else had access. He said when you drive up the road, most of it is wooded but his lot is open so the road is used by many entities to turnaround on this dead end road.

Hearing no further questions from the board, Acting-Chair opened the hearing to abutters.

Bob Deluca, 20 Collins Road: Mr. Deluca's concern was the location of new home, if he would be able to see it from his house and if it would detract from his property. Mr. Deluca is familiar with the property. Mr. Nute explained the proposed residence would be in a low spot, they would not be logging or doing clearing and he would be happy to walk it with Mr. Deluca. They discussed the location in relation to the horizon and the slope as seen from Mr. Delucas house.

James Gaffney: 95 Bible Hill Road: Expressed concerns with the location and not just because he will be able to see the new home from the back windows of his house and from around the property for more than 6 months of the year, but because there are geographic issues that are unique to the area. He said his house is down hill of the existing house and the logging road abuts his property. Mr. Gaffney explained that Bible Hill Road goes upward, not as steeply where the applicants lot is; the right side is Bradford and falls off toward the Warner River; the left side goes up Bible Hill further; everything above the abutter as well as up the hill where the proposed site is, all drains into a bowl (location of which he showed members on the map he brought). He said when facing the applicants house, there is a slight grade that goes away from the road and behind the house, everything funnels down into a low area before the hill, goes up steeply and down; all the water from up hill and adjacent properties flow down into a marshy area behind the house then traverses the property parallel to the road behind the house, the septic field which is on the downhill side of the house and then crosses the old logging road and from there it crosses the border to his property and from the rear property line drops fairly steeply, hits a more or less level spot between his house and the original

Bible Hill Farm. He said it makes a 90 degree angle where all the water pools if it rains heavily, it goes through an old culvert that goes underneath Bible Hill. He said the culvert is frequently at max capacity when there is heavy rain and it being a flat section, it is prone to flooding his abutters house as well as causing issues on his property.

Mr. Gaffney said that in the 1930's drainage improvement was attempted, the property was clear cut by the previous owner which exacerbated the drainage issue, the area can be seen on google maps, these issues have blown out part of the logging road which is why it probably has to be paved to improve it and make it passable in the winter, adding an impermeable surface to an already problematic drainage area. His concern is how the public good is served if problems are exacerbated. Are the problems solvable, Mr. Gaffney asked and answered, "May be" but they have to be considered as part of the application.

Mr. Gaffney said the other consideration is that he can see the proposed home site from anywhere on his lot for more than 6 months of the year; power and communication lines will be seen also because they can not be run underground; he and others down stream to the Warner River are impacted by this proposal and hopes the board will take into consideration the geography and the physical features into its consideration. He asked if the board had any questions for him.

Barbara Marty asked if Mr. Gaffney was not only saying the proposal would have negative impact on his view but also on the integrity of the neighborhood. He answered "Yes".

Linda Donovan, 10 Mill Pond Lane: Ms. Donovan said she was at the bottom of the hill, abutted the applicants property on one small corner; she did not think it would impact her property at all; her concern was for potential development but feels the concern was addressed when Mr. Nute explained earlier that he only intended to have one new single family resident. She said the potential still exists if he were to sell.

Ms. Donovan was told that some concerns were under the purview of the Planning Board and the Building Department and the ZBA is considering the request for a "frontage adjustment" and attending the Planning Board meeting would allow them to express their concerns and get answers.

Mr. Gaffney explained that the location of the new residence on the edge of the hill and the drainage onto Bible Hill and the back side are concerns but he thinks that some of his concerns could partially be mitigated by changing the location of the home but that will not mitigate the drainage and erosion issues that currently exist.

Hearing no further comments from abutter, Acting-Chair asked Mr. Nute if he had any comments.

Mr. Nute said he was glad the drainage and run off was brought up; he wanted to make it known to the board that the first 15 years of his career and educational background is in civil engineering and primarily focused on hydro-geology and sedimentation and erosion control and storm water design so he is well aware of the potential impacts and how to prevent them. He said he was a member of the Conservation Commission and will make sure that he takes care of the drainage, 100%, it is a huge important factor. He said he would pave as little as possible as he is aware of impervious surface - it will because they need to put sand down to get up the hill, maintain vegetation to absorb rain and not contributing to run off, current drainage issues are not as a result of anything he did but he does see improvement as he intelligently develops the property, this is all part of the plan; the view and if the house will be visible from another lot is a consideration, the plan shows an approximate location and he has not decided to build a 1 level house tucked behind the crest of the hill so that no one will see it from the road and conversely, he does not want to see anyone else's property.

The Board clarified that Approving the Variance was approving non conforming frontage for the zone Mr. Nute is in and not the linear footage (215 and 115) for the frontage on Mr. Nute's plan. They agreed that would be determined by a survey which would be necessary if Approval is granted and before proceeding to the Planning Board for Sub-division Approval.

Barbara Marty said one abutter feels his property will be impaired by this proposal so she would like to schedule a Site Visit and view the property and the surrounding properties because she is not familiar with the area and does not feel she could make a decision without seeing the site.

Motion by Barbara Marty: Schedule a Site Visit specifically to see what the views are from neighboring properties as you approach this proposed site. Second by Sam Bower.
Elizabeth Labbe -Yes Barbara Marty -Yes Sam Bower – Yes Howard – No Janice – No
Majority in Favor. Motion Carried.

After discussion, Site Visit planned for 1:00 PM, Saturday, November 25, 2017.

c. Continue Meeting/Public Hearing

December 13, 2017 will be the continuation of the Public Hearing.

6. COMMUNICATIONS AND MISCELLANEOUS

a. At the December 13, 2017 meeting

- 1. Vote New Chairman and Vice Chairman**
- 2. Letter for Rick Davies to be written by Acting-Chair and reviewed by members**

b. Consultation with legal council

After discussion, Acting-Chair said she would contact legal and schedule a meeting before the next meeting with the board.

c.

d. Hard copy of correspondence was preferred and would be available from the Land Use office for members to pick up or have mailed. Electronic preference by Janice and Elizabeth.

8. ADJOURN

Motion to Adjourn. All in Favor. Motion Carried. ‘

Meeting Adjourned

Respectfully Submitted,

Judith A. Newman-Rogers,
Acting Recording Secretary