



## TOWN OF WARNER ZONING BOARD OF ADJUSTMENT

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WARNER NH 03278

### APPROVED MEETING MINUTES

**Saturday February 24, 2018**

11:00 am Warner Town Hall, Lower Meeting Room

#### 1. **OPEN MEETING** and ROLL CALL

In attendance:

Elizabeth Labbe (alternate)      Barbara Marty  
Janice Loz      Sam Bower (alternate)      Howard Kirchner  
Beverley Howe

For today's meeting, Sam Bower is a voting member.

Meeting called to order by Chair Janice Loz

2. **Appeal to rehear Nute case ZBA 2017-04**, variance to the terms of Article VII/VIII, Section R3/OC-1 of the zoning ordinance: creation of one lot with 80 feet of road frontage.

Appeal submitted by **James Gaffney**.

**Barbara Marty** was opposed to the decision initially and hopes that if a re-hearing is granted that Mr. Gaffney will have more information to submit than was on the letter he sent, as she did not feel his letter provided enough information. She stated that changing the character of the area, by allowing this variance, and allowing a home on top of the hill so that the other house on the lot can be sold,

would create a domino effect for the town, and others will want to do the same. Mr. Nute could sell the house next month and the next owner could do whatever they want with it. By putting a house on the hill, you are removing the ability for neighbors to walk through that property.

We are here to defend the ordinance, and Barbara does not feel that the board defended the ordinance.

**Janice Loz** said that we had heard the case three times, and that the board did its due diligence. There were statements from neighbors and the ordinance was created so as not to create a subdivision, and this variance in no way creates a subdivision. From the road, it will still fit with the visibility of a country-rural setting. Janice does not think it is a good idea to continually re-litigate cases on which we have done a thorough job. She respects Mr. Gaffney's right to challenge the ZBA's decision. And even though some members were against it, Janice asked if members feel the board was thorough in gathering of evidence and the decision?

Janice Loz stated that the board addressed each of the five criteria.

**Sam Bower** asked about a ROW on the property. And members explained that ROWs can get very sticky. Although Mr. Nute was not requesting a ROW, Sam Bower wondered what Mr Nute's options would have been getting a ROW, if the Variance were to be denied. Sam said that there were several meetings, and a site walk, there was a lot of support from the neighbors, and there were some complaints as well. Sam agrees that granting a variance should not be an easy thing to do, and agrees that the domino effect is a concern. But also feels that the ZBA did a good job. Sam would need to see a glaring mistake that they made, and he does not see it. He feels the spirit of the ordinance was met, and he does not see why property values would be diminished, and heard from the Nute family that property values would be increased, and not devalued at all.

**Janice Loz and Howard Kirchner** stated that ROWs are Planning Board issues, not something that the ZBA would be involved.

**Howard Kirchner** stated that each variance is unique and an individual case. Howard agrees that the appeal does not state reasons why the ZBA made a mistake. Howard sees differing opinions of property values.

Audience member **James Gaffney** asked if he could ask a question and was told he could not as the process does not allow it.

**All members** agreed that they had received and read the letter. Janice Loz read the letter. (attached to this document.)

**Sam Bower** stated that the Nute party addressed all of the five criteria in their presentation.

**Beverly Howe** stated that **James Gaffney** stated that he testified and that the board did not listen to his testimony. **Elizabeth Labbe** recalled that **James Gaffney** attended the first meeting, did not attend the site walk, and did not attend subsequent meetings.

**Janice Loz** stated that Mr. Gaffney had a lot of issues about drainage which is addressed by the Planning Board. Other issues he had were about the view from his house.

**Barbara Marty** agreed with the ZBA did not thoroughly vet why the variance should be given. Barbara said that with new board members, and in the middle of a very intense hearing, that the process was hurried because of the Dragonly hearing. **Beverley Howe** felt the same way, and feels the Zoning Board did not do enough. **Beverley** stated she feels strongly about the character of the neighborhood. **Beverley** had stated in previous meetings that if only one non-conforming lot was granted, she would feel better, which is what was granted – one non-conforming lot.

**Janice Loz** explained that she thinks the board did a very thorough job, including 5 meetings, one of which was a site walk. The majority of the neighborhood was for the variance, and that while she understands Mr. Gaffney's concerns, they were heard.

#### **BOARD ACTION:**

**Motion by Sam Bower** to deny the appeal of administrative decision received from James Gaffney, on case ZBA 2017-04, due to lack of new evidence in the appeal and confidence that the board made the proper decision.

**Second:** Janice Loz

**Decision:** Approved. 4-1 with Barbara Marty dissenting.

Any aggrieved party has 30 days to appeal the decision.

Any expenses of the re-hearing appeal are to be carried by the person bringing appeal.

The board only received a letter, and did not receive an application. The letter was received by the Clerk's office; the Land Use Office was closed and did not take the letter.

Mr. Gaffney expressed that the 80 foot lot did not meet the spirit of the ordinance. Janice Loz said that it is all perspective.

Next meeting is March 14, 2018

Meeting adjourned at 12:00

Meeting Minutes taken by Diane Ricciardelli

LETTER FROM JAMES GAFFNEY

RECEIVED

FEB 08 2018

2/7/2018

To: Warner Zoning Board

WARNER LAND USE

From James Gaffney  
95 Bible Hill Rd  
Warner NH

To the Warner Zoning Board

Pursuant to the boards approval of ZBA case ZBA 2017-04 for the approval of a variance for the property located at 115 Bible Hill Rd Map 12 lot 5

I am appealing the ZBA's decision to grant a variance in this case and request that the ZBA re-hear the case due to the fact that the statutory requirements outlined by the state and supported by well established case law were not met by the ZBA or the applicant

Statutory requirements mandate that a Variance meet the following outlined by the state

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance is observed
3. Substantial Justice is done
4. The values of surrounding properties are not diminished
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship

I can find no evidence that the above statutory requirements have been met literally or in spirit based on the meeting I attended and the boards meeting minutes for subsequent meetings

Quite the contrary I testified on several points how the public interests are NOT served, that surrounding property values WILL be negatively impacted.

The granting of this variance without satisfying the statutory requirements outlined by the state will result in other public/private harms and qualify by precedent ANY property in Warner that does not have sufficient frontage to qualify for a variance

Thank you

James Gaffney  
95 Bible Hill Rd  
Warner NH 03278

