



Town of Warner
Zoning Board of Adjustment

APPROVED Meeting Minutes

Wednesday, March 14, 2018
7:00 PM Warner Town Hall

OPEN MEETING

1. ROLL CALL

Harry Seidel (alternate)
Beverley Howe
Sam Bower
Janice Loz (Chair)
Howard Kirchner (Vice Chair)
Elizabeth Labbe (alternate)
Barbara Marty

Welcome Harry Seidel. Harry has been sworn in as an alternate, and has been a Newbury ZBA member for 25 years. Sam Bower has been sworn in as a full member.

2. APPROVAL OF MINUTES – January 10, 2018 (make motion, second, discuss, voice vote)
February 24, 2018 (make motion, second, discuss, voice vote)

Motion by Barbara Marty Motion to approve January 10, 2018 minutes as amended.

Second by Beverley Howe

Unanimous approval of January 10, 2018 minutes. Vote 5-0

Motion by Barbara Marty to approve the minutes of Feb 24 as amended.

Second by Howard Kirchner.

Unanimous approval of February 24, 2018 minutes. Vote 5-0

3. VARIANCE APPLICATION - Case: ZBA 2018-01

APPLICANT: NeoKraft Signs , Patrick Bolduc

PROPERTY OWNER: Cobalt Properties NH Corp

MAP #14, LOT 008 ZONING DISTRICT: Intervale Overlay Dist.

PROPERTY LOCATION: 32 ROUTE 103 WEST

DESCRIPTION: Variance to the terms of: Article XII , Section B, 14 of the Zoning Ordinance of Warner for the installation of a new internally lit sign at the Irving Station.

Notices have been sent and abutters notified.

Motion to accept the application as complete by Janice Loz

Second by Beverly Howe

Approval to accept application as complete, by a 5-0 vote.

Janice raised a question as to how this application is different from the last time this case was heard.

Patrick Bolduc of NeoKraft Signs:

NeoKraft – I believe there is fluorescent inside the sign. We will replace with LED. Proposed LED lighting. Instead of manual changes, you can change within the store. It is better in inclement weather. The location, with the roundabout, is a prime location for this type of lighting. You can get the information quicker so as not to take your eyes off the road. It is important for people see both gas stations quickly enough.

Exposed LED lights will not be any brighter than a red stop light. Because of the excessive set back, it is not in your line of sight when you are trying to get back onto the highway.

For the five conditions for the variance:

Granting the variance will not be contrary to the public interest because: The Pylon sign will be easier to read and will not be a hindrance to passing motorists.

By granting the variance, the spirit of the ordinance is observed because: The sign has no flashing lights or animation or any kind.

By granting the variance substantial justice is done because: Our Client (Irving) is able to capture the lost dollars of potential customer who currently have a difficult time reading the sign.

Granting the variance will not diminish the values of surrounding properties because: This area is clearly a commercial area where no residential properties will be affected.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: because of the excessive setbacks for the pylon sign, it is too difficult to read while driving by without aid from internal illumination and LED price changers.

Howard asked if it has a fluorescent light inside that illuminates the numbers.

Patrick – we will freshen up the face a bit. It will say the same thing that it says now. Just replacing the numbers.

Beverley Howe: said that the problem before was that it was too bright. But if bright is better. Everyone was worried about it being too bright.

Patrick: LED price changes are just bright enough to see. They don't need to be super bright so that you would have to squint. The LED - you will be able to see the LED modules. The internally lit comes from the part of the sign where the blue faces are. Internally lit is all over town. There is a huge liquor store across the street. The golden arches are within the sign that light up the sign.

Harry: Has said he is not as familiar with the ordinance. This internally lit issue, what is prohibited. I thought the town of Warner was prohibiting signs that moved. New signs can be lighter or softer. An internally lit sign by itself is not unsafe or creating glare. It was a safety factor, and the weather is incredible, so you'd have to go out onto a ladder and change it in the ice and snow. The technology you have now, you have to push a piece in. The modern technology is safer.

Patrick: they are at one standard brightness.

Elizabeth Labbe: if it is not internally lit, then why is there a variance?

Sam: There still will be internally lit sign. What is the main complaint?

Patrick: I didn't see the original sign lit up. They are not allowing internally illuminating signs, but then I drove into town and saw all the internally illuminated signs. I thought the problem was with the LED digits.

Janice said we did have a problem with the LED digits. But now I'm trying to figure out if it is the RED led lights.

Patrick: It's a tough problem. I deal with a lot of towns that are re-writing their ordinances.

No public or abutters that would like to speak.

Harry: I'm following this conversation, it seems that looking at this application, the LED lights are not specified in our ordinance. So we don't have a direction from the PB on that issue. I would look at this as, "What does this do for the spirit of the town of Warner?" I think the town of Warner wants nicely lit signs. If you look at what is proposed, it is not overly done. I look at this and think It is an improvement, and a safety sign.

Sam has some concerns and we are saying that our ordinance says "no internally lit signs" and knowing that we have 4 or 5 in town. My concern is that if we slip past this, then we are starting a precedent that other companies can just change their signs.

Janice thinks the current sign fits in nicely now.

Beverly Howe: I think it is time to change our ordinance considering half the places in town already have this lighting. It is not internal lighting.

Nancy Ladd: Surely when they had an internally lit sign put in, then they had a variance. I know that McDonalds has a variance. I imagine that Irving got a variance at the same time. The liquor Store did not have to go through the board because it is the state.

Barbara Marty: I was looking through the 2007 case, and it is exactly what they were asking for then. Sounds like the same application that was denied before.

Janice Loz: If we let Irving do it, then the other gas station would want to.

Harry: The other signs in town that are existing, should not be part of our discussion. We should just focus on just this case, and the other signs in town are not germane to this.

Janice Loz: The numbers will not be bigger?

Patrick: Very close, and will be green LED. Same brightness. You'll be able to walk straight up to it and not have to squint. It is for the same reason that you can look at a stoplight and it is not offensive. Just have to be bright enough to see.

Martha Mical: Are you also talking about the sign having the LED? You are doing two changes, 1)the source of the lights and 2)asking that the number be digital.

Patrick: Yes. We want to remove the fluorescent. NeoKraft and Irving are converting to LED. Technically from the outside, you will not notice a difference. Irving will notice a difference in paying 1/3 the electricity to light it.

Sam: The lighting source itself can be changed as is, without actually changing the face of the sign.

Patrick: Yes. The only reason to change the face, is to freshen the face, changing the lenses, changing the verbiage, and for the new rewards program.

Howard: Does that mean if this variance is not approved then you are stuck with the same sign forever?

Patrick: It is similar to keeping your same sign but putting on a new fresh coat of paint. We are not proposing a new sign.

Howard: Would this be something for the Planning Board to look at it?

Sam: I don't see any reason why the sign cannot be brightened up. I don't think he needs a variance for that.

Janice Loz: We don't have anything in the ordinance prohibiting LED.

Harry: I actually think that these light bulbs use about 1/3 the energy that the florescent lights. That is 1/3 less coal and fossil fuels. LED is far more efficient. I would also say that it speaks to the spirit of the ordinance.

Correction: the address for the Irving station is Nichols Mill Way. A recent change.

Close public hearing.

Motion to close the public hearing **Howard:**

Barbara Second.

Unanimous approval to close public hearing.

Board Deliberations:

Howard Kirchner wants to discuss that Warner needs to be a little more business friendly. Denying this variance is not putting our best foot forward. I think this is a nice easy help to a business that just want to work more efficiently. I think we should consider from that aspect. We are going to need more business in town.

Barbara Marty: I don't think that not allowing this sign does not make us any less business friendly. If you start allowing LED signs that is makes it feel very commercial, instead of a quaint New England town. There is nothing new that does not make me think the Zoning Board did not get it right the first time.

Howard Kirchner: I guess what we need to think about is if there are no LEDs, but can still upgrade the sign somehow, with a difference in the sign, is that allowable without a variance? First of all, they have an internally lit sign, do we give them a variance that they can make improvements on their sign as long as there are no colored LED's?

Sam's assumption is that you don't have to get permission to touch up your sign, and even changing the lighting source to LED, then I don't think it's a huge deal. I am concerned about the electric lettering, as opposed to what is there now, from the application, because it is too difficult to read when driving by without aid from illumination and LED price changes. I think the town of Warner has survived just fine without those. Most of the time, excluding blizzards, you can read the sign just fine. Would the business across the street be at a disadvantage if Irving could attract more customers with this sign? I'm worried that it would cause harm.

Janice: Irving previously wanted to have LED numbers and the ZBA told them, no. Then Evan's wanted to do that, and we told them, no.

Sam: I don't see any reason they need an application to redo their sign. Some of the paint is cracked and coming off. I hesitate to grant the variance with the illuminated LED price changes included.

Janice Loz: What are the board's thoughts on the five criteria?

Barbara Marty: If it has a ripple effect, that we know it probably will, then it is contrary to what the town has already said they want in the master plan.

Sam Bower is not comfortable granting a variance to an ordinance that is already hazy. There is already confusion about how the ordinance is written. That would be contrary to the public interest.

Beverley Howe: I see no reason to not have it. If you look at the picture, it looks good. That's what I think. I don't think it is going to destroy our town, seeing we already have all this lighting.

Janice Loz: In terms of the criteria, is the spirit of the ordinance observed?

Howard Kirchner: It is already in violation of the ordinance. It is a grandfathered sign that is already internally lit. They are already grandfathered.

Barbara Marty: The LED portion is already grandfathered in?

Janice Loz: In terms of substantial justice being done. I don't think that customers have a hard time reading the sign. I find it hard to believe that they will lose business if they don't have lit numbers.

Howard Kirchner: You could say that the state liquor store has helped their business.

Janice Loz: Granting the variance will not diminish the surrounding property we touched on this. I find it hard to believe that not having LED numbers would create an unnecessary hardship.

Howard Kirchner: If changing the signs manually, could be considered unnecessary hardship.

Janice Loz: The ordinance that we have in front of us, is unclear but it is the best we can do.

BOARD DECISION:

MOTION: Barbara Marty: Motion to deny the application to the variance to add LED price changer numbers, in reference to the application ZBA case 2018-01, finding that the application did not support the 5 conditions that have to be met to be granted a variance. Also because this case has already been heard and denied, that we are supporting the prior findings.

Second by Sam Bower.

Further discussion: None.

Vote: Barbara, Yes. Howard, No. Sam, Yes. Beverly, No. Janice, Yes.

Motion passes with a 3-2 vote, Howard Kirchner and Beverley Howe dissenting.

BOARD DECISION:

Amendment: the sign as it stands can be refurbished to the same dimensions, the existing lighting, as-is, can be upgraded to LED but the digital LED changers could not be allowed.

Second by Howard Kirchner.

Unanimous Approval of Amendment

Motion has been denied. Appeal within 30 days.

Warner Zoning Board of Adjustment Note: The New Hampshire RSA 677 provides that the Board of Selectmen, any party to the action, or any person directly affected has a right to appeal this decision within 30 days after the date of decision. This notice has been placed on file and made available for the public inspection in the records of the ZBA.

Patrick: Am I correct in saying that LED price changers are not allowed. Is that correct?

Sam Bower: Unless they are considered internal illumination.

Janice: I think you have a valid point, and I think it is something to bring to the Planning Board.

Patrick: Ironically you have an LED board across the street.

Janice Loz: They have permission from the Select board.

Janice Loz If you feel you want to appeal this case, you can do so.

4. VARIANCE APPLICATION – CASE ZBA 2018-02

APPLICANT: Joseph Mendola

Property Owner: Alan C. Wagner, Jr.

Property Location: Schoodac Road

Map #11, Lot 14-1

Description: 13 unit Tiny house open space development under the Manufacture Housing Park Regulations.

Jason Bielagus represents Joseph Mendola.

The Board checked the application for completeness.

Abutter Maureen Hampton noticed that not all abutters were notified: The Swanson's were not notified. (Note: Land Use Secretary notified abutters, and subsequently verified that Swanson's are not abutters, and they were in attendance.)

Janice Loz: Article 13, Section E3. We might be talking about Sections E1, E3, E4, and E6, and not just E3. And we might ask the applicant some questions about that in order to get a well filled-out application. And my reasons for that are E3, is site size, contains less than 15,000 square feet, and have a depth of 150 and frontage of 100 feet. But there is also E1 which says Manufactured house shall not include wetlands, water bodies, severe slopes, and I believe that there are wetlands and water bodies on that property. So I wondered if you wanted a variance from that as well.

Jason: We don't need to vary 1, we are trying to avoid the wetlands. E.3. It might be better to say article 13, section E, and strike the .3

Make a motion to change the application, strike the .3

Application would include subsections of article 3.

MOTION:

Motion by Janice Loz : to make the change to the application that says Article 3 section E and strike the .3. So the application would include of Article 3, section E.

Second by Barb Marty.

Decision: Application is unanimously accepted by the board.

Open the public hearing.

Joseph Mendola spoke about his application:

There is a significant opportunity for private and public sector to come together for starter homes for millennials. NH is the second grayest state in the nation. If we don't retain the 22-35 year olds, and encourage more of those people into the state, we will not have a sufficient economic base to provide for the economic needs of our state. The baby boomers who are considering retirement, scaling down from their larger homes, and scaling back. Mr. Bill Redding from the NH finance authority, not only do we have an inadequate supply of starter homes, the millennials are competing with boomers for housing. The baby boomers have significant loan debt which further exacerbates the problems. Using the open space concept. Millennials are looking for 1) low environment impact 2) houses that are mobile and 3) they need/want a home that is less than 200k. Most of the houses built today are priced at that 200k+.

Asking for a variance for the manufacturing housing, to be put in a clustered way, so there would be no change in the density. With me tonight is civil engineer, Jennifer McCourt, and Jason Bielagus.

Application read into record. Jason Bielagus.

Asking for approval of a variance specifically for a variance article 13, section E. in our variance what needs to be met:

1) Granting the variance will not be contrary because of the development we are proposing. The end of the lot has 14% slope, unique features. We are trying to work with the unique features with minimal amount of impact. Propose to cluster where the tiny home would be. There will be minimal impact on the environment because we will group the units toward the center.

2) Spirit of the ordinance is observed. What is the spirit of the ordinance? Why do we have it? The arrangement of Tiny Houses as shown on the attached plan was designed so as to minimize the

environment impact, which will promote health, safety, and welfare of the inhabitants, and will increase buffers, which will preserve the values and charm now attached to the town.

3) By granting the variance, justice is done because the arrangement of the Tiny Houses as shown on the attached plan will minimize impact to the environment and increase buffers, and will therefore minimize any negative impact there may be to the general public or other individuals.

4) Granting the variance will not diminish the values of surrounding properties because a manufactured housing park is an allowed use in this district, and thus this development would not have a negative effect on property values in the area. Also, the proposed development minimizes impact on the environment and increases buffers, and both of these factors would minimize any effect on the other properties in the area.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. There are special conditions to this lot that distinguish it from other properties in the area, specifically this property, which comprises 15 acres with an average width of 390 feet, with Barclay Brook near the front of the property, and other wetlands to the east, and an easement to Eversource bisecting the property. Additionally, the property has a slope of approximately 14%. If the zoning ordinance were strictly enforced, there would need to be a substantial impact on the environment for this development. If you were to strictly enforce the ordinance, you would have to have a lot of earth moved. There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision on the property. To the contrary, the proposed development would benefit the general public purpose of the ordinance by minimizing impact to the environment and increasing buffers. As the proposed development minimizes impact, to the environment and increases buffers, the proposed use is reasonable.

Chair that takes us through the 5 criteria. Also on the fourth page, is the details of the request which I will also read into the minutes:

Details of request.

This project will create a Tiny House development in Warner, in compliance with the Manufactured Housing Park regulations, in an open space concept. A "Tiny House" is as the Warner Zoning Ordinance defines a "Manufactured Housing". The Tiny House concept is gaining popularity because in the current economy, young people need to be mobile. In today's world, young professionals are expected to change their jobs 10 times in their lifetime. In this economy, a young person needs to be able to be mobile, and to be able to drop everything one day and within a week cross the country and be ready and set to begin work at a new job. Being able to take one's house and belongings with him or her allows for this kind of mobility.

The existing site comprises approximately 15 acres, with Barclay Brook at the front of the property, and an Eversouce easement bisecting the property. East of the powerlines, the site slopes at about a 15% grade, and has sporadic wetlands.

Although there are no rules and regulations specific to Tiny Houses, the Tiny House concept does fall within the Manufactured Housing Park regulations. Under those regulations, we could develop 13 sites with 1,000 feet of Town road. However, strictly applying the zoning ordinance to this development would result in a substantial impact to the environment. In order to reduce the environmental impact, and to utilize the Open Space Subdivision criteria, the proposed development clusters the Tiny Houses to minimize the impact to the environment. The attached plan shows 13 Tiny House sites grouped into clusters of 4, and reduces the Town road to 850 feet, and avoids disturbing one wetland of 525 square feet. This plan also increases the buffer between this development and the abutting properties.

To be able to complete this Tiny House open space park, and in order to minimize the impact to the environment, and to increase the buffers, we will need a Variance from the Manufactured House Park requirements of site dimensions of 100 feet of frontage, 150 feet of depth, and a minimum area of 15,000 square feet.

A handwritten signature in cursive script, appearing to read "Joseph M. Mudda". The signature is written in black ink and is positioned in the lower right quadrant of the page.

Jennifer McCourt, McCourt Engineering Associates.

The Yield Plan: In addition to the Barclay Brook and the Eversource easement, there is an area that was mined for gravel. The front end of the site has already been disturbed. If we were going to do a traditional manufactured housing unit development, how many units can we fit in that? Laid out the areas within the regulations of a town road, which is a maximum of 10% grade. There are some areas that are over 25%. Then we broke it into lots. The lots have 15000 sf, all have 100 feet of frontage, and at least a depth of 150 feet. The setbacks in the front is 25 feet, and the rear is 15 feet Square on one side, and 20 feet in the rear, and 15 feet on the side. I did put a square in there of the Tiny house of 8 x 40 ft. I used a hammer-head turn-around. I did talk to the Director of public works (Tim Allen) and he said he would prefer hammer heads to a cul-de-sac. So we know that is going to be a waiver if/when we get to the Planning Board. That is not an issue for the Zoning Board. So what this produced is 1000 feet of town road.

Open space plan, clustering the houses 5 wells and 5 septic which minimizes environment impact. This would not disturb the road with the wetlands going through it. Would not go through the ledge areas so no need to blast. This minimizes the number of wells, septic, and wetlands. We came up with 850 feet of road, and two parking spaces and a minimum distance between them of 30 feet. We kept the 150 buffer from the road. And 25 foot setbacks. Tested the soil and found adequate soil to support the units. Utilize the area out front that has already been disturbed. We maintain the undisturbed area.

Jason: Under the zoning ordinance, this is what is allowed, this development. We could do this without a variance. It requires 15000 sf per unit, so it forces you to spread out the units. So we would have to do much more road, and we'd take the 15 or 16% slope down to 10%, and this ledge so it would involve blasting. And because they are spread out, there would be more wells and septic. So this is what is allowed, but we don't think it's the best use of the land and the environment. So, instead we looked at working with the land, and trying to disturb the land as little as possible. Then this is what we came up with, and this is what is proposed (the map with the tiny houses.) We cluster the units and follow the contour of the land. By doing this, we have much less road, and much less blasting. You don't get the 15000 sf around each unit. So if we get a variance for the zoning ordinance, then we can go ahead with this plan which has more buffer and less impact on the environment, which complies with the spirit of the zoning ordinance.

Janice: So you are saying that the first plan is allowed in our current zoning ordinance?

Jason: Yes, the one with the units more spread out, is already allowed in your ordinance.

Jennifer: That is what is shown on this plan, 25 foot setback, 15 foot side, and in the rear it is more than the 20 feet, because you have the setback from the property line. What I did on the cluster with the open space concept, is that I did maintain the 25 foot setback from the roadway. There is more than 20 feet to the rear, but maintained at least 30 feet between them for the side setbacks, so 15 feet each.

Sam: With the proposed map, the ordinance as stands calls for a minimum area per unit of 15000 sf, do you know what the minimum area per unit is?

Jennifer: That is why we need the variance from that, because we are not going to define a site for each unit except for where each unit could go, and there are 2 parking spaces. Could look at it as zero lot line sites, instead of having defined sites. It minimizes the disturbance each site would have. There won't be as many sprawling environmental impacts that happens with any single family house.

Joe Mendola: There is no difference in the number of units.

Elizabeth: Can you clarify the road?

Jennifer: We are proposing to have it as a public road. It would be built to town standards.

Elizabeth: Then it would be the town's responsibility to take care of.

Jason: That is a separate process. It could be accepted if the town wants to accept it. That is a separate process. Any road that is made in a sub-division, has to be made to town standards, for a number of reasons. There is a separate process for when a town accepts the road. So you make the road according to town standard, and then it could be privately maintained, or the community could do a petition to make it a town road. It will be made to town standards for safety and to be accepted in the future. That is not what we are here for tonight.

Howard Kirchner: So basically it seems that the issue you are here about is site size. You are saying you are allowed to do 13, but with giving you a variance for site size, you could do the clusters.

Harry Seidel: I question that the developer has a right to create a 13 unit sub-division on this property. In the ordinance, the manufactured housing, it says that the RSA 674:32, "Municipality that adopts land use control measures shall allow, in its sole discretion, manufactured housing to be located on individual lots in most, but not necessarily all, land areas in districts zoned to permit residential..." So 674:32 says that towns can allow manufactured units on/in certain areas, nothing is saying that by right the town gives up the right to a developer to do it anywhere he wants, on any kind of land no matter of the slope or environment impact. I just wanted to ask that question, as we are talking about lot size and other things, assuming that there is a right for this sub-division, and I'm not convinced.. I have walked this land. This is a very, very steep site. Is this road following the road that is there now? Does this road follow the road that is there?

Jennifer: Partially, but not completely. It varies a little in order to get the 10% grade.

Harry: It looks like it goes straight up the contours, instead of going diagonally across them, and the road is only 10 pct grade? Is that an average? A max of 10%?

Jennifer: A maximum of 10% as required by the road standards in the sub-division regulations.

Harry: paved road?

Jennifer: Yes.

Harry: and the drainage is easily accommodated? The drainage that will come off the road will go straight down the contours.

Jennifer: Yes, it has been considered and would be addressed by the Planning board, as required..

Jason: Mr. Seidel, before you talked about the road you had a question about the zoning ordinance? Can you read section E1 of the zoning ordinance. 13.E.1.

Harry: Manufactured housing park. 1. Where Allowed: Manufactured housing parks shall be allowed in all but the commercial district (C-1) and Business district (B-1) and consist of a minimum of 10 acres and at least two (2) sites. The maximum number of sites shall not exceed 25. Housing sites shall not include wetlands, water bodies, roads, severe slopes or open space on individual sites.

Jason: Does that answer your question?

Harry: No, it does not. It says that “Manufactured housing parks shall be allowed...” and in the state statute says, in the RSA, that it can be allowed, but not necessarily on all lots. It does not say that they are guaranteed to be allowed depending on the significant land concerns: Those concerns are: Land constraints, slope, water body, wetlands, size, ledge.

Jason: So the state zoning ordinance says, towns you can enact zoning ordinance if you want to. And these are the things you can and cannot do in your zoning ordinance. Then the ball passes to the town to enact a zoning ordinance. So this town enacted Article13, in compliance with RSA 674:32 – the general zoning chapter. There is state statute 674:32, and then the town’s ordinance, and here it says that you can have manufactured in all of your districts except for C1 and B1. So this is R3, so you can have it. So long as the lot is a minimum of 10 acres, we got that, and there are two sites. And it is not to exceed 25, and we are going to have 13 so we are well under that. “Housing sites shall not include wetlands, water bodies, roads, severe slopes or open space on individual sites.”

And this is B1, so this is included. That first plan one that we showed is how we would do it without a variance. If we want to do with less of an impact, if we vary the 15,000 sq requirement, then that is what we are asking for. We feel that this agrees more in spirit and purpose of the zoning ordinance.

Harry: The state statute gives town’s general guidance for what they can do. They have said that manufactured housing - “ Municipality that adopts land use control measures shall allow, in its sole discretion, manufactured housing to be located on individual lots in most, but not necessarily all, land areas in districts zoned to permit residential...”. That says that if you allow manufactured housing in your town in certain residential districts, or commercial or any district, it does not necessarily give you the right to it, but you may, if the sites allow it. It is not saying that towns are bound to allow manufactured housing. It says you may allow it but it gives you the out.

Jason: You should probably contact your town attorney if you don’t like my interpretation. The statute is giving town’s guidance about how they do the zoning ordinance. And then the town does the zoning ordinance. You get it, except for C1, B1, lot over ten acres, and I think we got it.

Janice: I think what I'm hearing both of you say, it does not give you an inherent right to, depending on the conditions of the land, but it is not that it does, or doesn't. As long as certain conditions are met, then it is within your right.

Joe: What the town has done, when creating our zoning piece that says we want manufactured housing parks in our town. I congratulate Warner for having the foresight to allow this and to solve some of the economic problems that we have. There are not a lot of towns that have the foresight and the provision that this town has. Whoever created this, the town fathers, the zoning board, have said yes you can do it, but not in B or C zones, and that is in part to what we trying to do.

Harry: The way the planning board wrote this ordinance, they referenced the significant RSA 674.32 which outlines all the guidelines that would protect the town of Warner, so they did not need to get into the specificity of everything involved. Counsel can argue with me, but that is what is says, and it goes on to say that " manufactured housing located on individual lots shall comply with lot size, frontage requirements, space limitations, and other reasonable controls, that conventional single family housing in the same district must meet..." They get very specific in the RSA about how you should do it if you are going to allow it.

Joe Mendola: I think the town of Warner, exercising its rights, looked at the RSA, and created their own rules, because we are governed by local control. I have researched every town from here to Portsmouth, in every town it references 674, but gives local control, and that is what Warner has done.

Janice: I have a question about the definition of manufactured housing. ARTICLE 13, "Manufactured housing - Any structure, transportable in one or more sections, which in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation.." I don't see how a tiny home fits that definition. Are you expecting to take their tiny home and stay there forever and never move?

Joe: A tiny can take the home and move.

Janice: That is why it is not 40 feet long, or 8 feet wide.

Joe: That is more a Planning Board issue. It says, "OR" in there. Every tiny home will be 320 square feet.

Janice: "when erected on site" means built on site. They are not intended to be built on site. It does not in my mind fit into the definition of a manufactured home. I think of it as either a mobile home or a manufactured house that is shipped in two parts, on a truck. It seems to me that if you scan down to number 5 in Article 13, a tiny home fits a travel trailer definition, "Travel Trailer - A mobile home designed to be used for temporary occupancy for travel, recreation or vacation use;" "Travel Trailer" thereon; and when factory equipped for the road, being any length provided its gross weight does not exceed forty five hundred pounds, or being any weight provided its overall length does not exceed twenty eight feet. They are made for the road to be moved on a regular basis. I don't even see where it fits in with the manufactured housing definition at all.

Joe: The travel trailer piece, in the wisdom of the town, they said you can put a manufactured house there. You could also put a travel trailer. I am not looking for a travel trailer, I am looking for a permanent residence for young people, that is 320 sf, because that is what the Planning Board said we need, on a chassis that has wheels. The problem we are having, we are trying to join the 21st century, is that we are back to the traditional mobile home, and the tiny house is the 21st century mobile home.

Janice: Does anyone else have trouble with that definition?

Beverley: I have trouble because if you are talking about the town of Warner, a trailer park is not charming, it really is not. And that was your quote, not mine. People are going to come in, spend a year here? Have children? Go to our schools? When they move? What happens in winter when we have 6 feet of snow? They are used all over the country, but mostly in the south, not here. They are cold too, btw.

Joe Mendola: If you look at the house in the packet, it is not a mobile home. It is very tastefully done. What we have in the state, is a declining population in the school. When you have low numbers, you don't close down the gym, you pay for the gym and all that goes with it. Demographics on millennials, baby boomers do not form a household until the average age of 31. They are taking longer to form households, and by nature of the building being 320 sf or 350, it is not setup to have children.

Beverley: I have seen them on TV, and they have children.

Joe Mendola: Most of the millennials do not form households until they are 31. They are not raising a family.

Jason: I feel we are getting a bit astray off the application.

Janice: It is not that I have a problem with tiny homes, and I don't see how it fits with the definition of manufactured home. And I really want to understand it.

Jason: Looking at the definition. It is any structure that is transportable. Erected on site means attached to the utilities. That is in the statute. It is in with the section on transfers of property, what a manufactured house is. It becomes erected to the site.

Janice: Does the board want to stop the meeting tonight at 10pm. We need to get to public comment. It looks as if we will continue this.

Jason: 320 sf or more, on a permanent chassis, designed to be used as a dwelling, with or without a permanent foundation, and erected on the land. When connected to utilities, including plumbing, heating, electrical, This is from the zoning ordinance, C1. If you skip down to G general requirements. (page22) You get more requirements there. Goes into more depth about requirements.

Janice: Has to be on a piece of property that you own, or you can leave it on someone else's property but you cannot pay them.

PUBLIC COMMENT:

Abutters First:

Questions and comments from abutter, Maureen Hampton
Map 11 Lot 18 - 137 Schoodac Road, Warner. NH
Regarding Variance Application – Case ZBA 2018-02
March 14, 2018

Opening Statement Thank you for the opportunity to address my concerns.

It is my understanding that I may also present follow-up questions and comments later prior to your closing of the public hearing. Is that correct?

I would like a copy of tonight's audio recording.

Please note for the record, that I have emailed to the Land Use Secretary a letter from Griffin Manning, an abutter (Map 11 Lots 14-2 and 27-1) with a significant common boundary. He could not attend on such short notice.

I understand the need for affordable housing in Warner. I also notice there are items in this Application for Variance that need clarification.

Items for Clarification

The applicant's information has samples of Tiny Houses. If Tiny Houses **are** considered travel trailers, then Ordinance Article 13 – C5 & G3 contains different requirements.

If Tiny Houses **are not** considered travel trailers, then the applicant's document referring to a Tiny House website that indicates 200 square foot Tiny Houses doesn't meet the minimum 320 square foot dwelling required for a manufactured housing park. Article 13 - C1

In the Applicant's Details of Request, there is reference to Cluster of units. For Cluster Development Article 13 - F4 says Article 14 must be used, which basically requires 1 acre lots and designated open space among lots. The applicant appears to be using their own type of Cluster. Grouping 4 units together by itself is not allowed per Article 13 – E1 that refers to up to 25 **individual** sites.

The Applicant's request is not only for dimension changes in Article 13 - E3, but also would throw out the concept of individual lots for each unit. This is a major difference in the Ordinance's language.

A Manufactured Housing Subdivision (Article 13, Section F) would create different lot dimension parameters in the R-3 District (Article 7).

Does the Applicant expect to need to comply with RSA 205 regarding operation of Manufactured Housing Park, or is this considered something different?

If a Manufactured Housing Park is being proposed, will there be Covenants or Association Documents? If not, then it's not a Manufactured Housing Park per RSA 205. If there will be documents, how will the applicant have tenant/owners comply with the Tiny House Concept – applicant's Details of Request letter indicates this is for young mobile professionals – RSA 205 language may not allow this.

The Applicant within their Details of Request acknowledges that the Tiny House name is not in the Ordinance.

What is the reference to “Open Space” in the application Details of Request? Open Space is a separate Section on the Ordinance – Article 14.

What is the purpose of the drawing with the longer road and 13 individual lot if the application requests the clusters of 4. The drawing with the longer road also does not comply with all dimensional criteria in Article 13 - E3, or some other Article 13 and possibly Article 14 requirements.

There is reference to an increased buffer to abutters, but no provisions holding the applicant to this.

The abutter notice I received and the public notifying ads do not indicate the magnitude of how the applicant would like to have relief from the terms of the Ordinance Article 13 section E3. The Applicant’s information appears to have multiple proposals. For the record, is the Variance application requesting a Manufactured Housing Park per RSA 205 specifically on the “Conceptual Open Space Manufactured Housing Drawing” exhibit dated January 15, 2018? Is that what the Board will consider tonight?

I understand that the ZBA per RSAs cannot change the Ordinance, they can only provide relief from Ordinance provisions if the 5 criteria for a Variance are met. The Applicant appears to be trying to build a project for which there are no such provisions, except as they have selectively assembled from various components within different Articles of the Ordinance.

Five Variance Criteria Questions

In answering these 5 questions and in the Details of Request, the Applicant keeps referencing the plan will minimize environmental impact. The definition of Buildable in Article 3 defines Buildable Area, as does Article 13 – E1. Much of this hilly/wet District of our Town is not buildable.

#1 – **Public Interest** – Is there a way to tax the Tiny Houses? A larger buffer does not help the Town.

#2 – **Spirit of Ordinance** – The Ordinance in District R3 calls for 130,680 square foot (3 acre) lots and 250’ frontage. The Open Space Ordinance in Article 14 allows 43,560 square foot (1 acre) lots. The Ordinance is already lenient with 15,000 square foot lots per unit with 100’ frontage and 150’ depth for correctly designed Manufactured Housing Parks.

#3 – **Substantial Justice Done** – Town tax structure would be adversely impacted.

#4 – **Diminish Values of Surrounding Properties** – Other houses in the area have 3 acres minimum lots. Why would the ZBA protect one property over the property of another? Concentrated noise issues.

#5 – **Hardship that Distinguish it from Other Area Properties** - All Properties in the Area have the same type of slopes, power line easements, and wetlands – there are no Special Conditions that Distinguishes it from other Properties in the area. R-3 is intended to have 3-acre lots on these types of terrain consistent with the Town’s Master Plan. This is a self-created hardship.

The request for a Variance should be denied.

Other comments

It is my understanding that the Notice of Hearing needs to be posted in three locations. I saw it on the Town Website and in the Town Hall. I didn't see it at the Post Office. Where was the third location?

Janice Loz: Website, town hall and Concord Monitor.

Maureen Hampton: The Ordinance Article 13 – E4 requires location of units at least 150' from an existing residence. I believe one is within 150 feet from my house.

I would like the Board to consider doing a site walk?

The Planning Board should think through the entire Tiny House concept package with appropriate language for the Town Voters to consider in the future.

Abutter **Maureen Hampton** noted that not all abutters were notified: The Swansons were not notified. (Note: Land Use Secretary notified abutters, and subsequently verified that Swansons are not abutters, were not listed on the application, and they were in attendance.)

Alex Brofus: I am from Hopkinton, but own 191 Schoodac road. I did not think it would be possible to lower the value of my property any more. I am trying to clean it up and sell it. And it's a corner lot. I don't know who would buy it, except you. I am sweating with greed thinking about the possibilities to sell my land. I think this is a great idea. Potter, It's a wonderful Life. Increase your taxes by having more children. I don't know anyone who wants to live in a house that is 8 x 30 in Warner, or Hopkinton or on my 35 acres or Hopkinton where I live. From the standpoint of is this a good value for you as a tax payer? I don't think so. I have lived here since 1963. This particular land floods every spring. Another feature, deadman's corner, this is a terrible place for children. This is a tricky area. I am concerned with the water table. I was not concerned when I moved in. There are a lot of turtles on this property. But I am concerned now. I recommend that you check the water, to see what has leached into this thing, especially if you are going to be having young people there. You'd be better off buying my land. Think of all the tiny homes, and the civic minded people. Apparently Warner is the only place in NH that allows this thing. There is a road down there, Poverty Plains, that is the device that started this. There is a story behind this with small houses. Once you start this, people do not want to build multi-million dollar houses next to tiny houses. They want to build more tiny houses. It's a puzzle to me. On one hand, I am civic minded, and on the other hand, I want to sell my property. I thought that larger homes would be useful. I would sell out to build more of the same. I don't see how you stop the trend.

Mr Brofus said that he sent a letter to the land use secretary but it has not yet been received. He left his email address with the Land Use Secretary to be contacted.

Comments from the community:

Martha Mical: Manufactured have to have HUD approval on them. I don't think that Tiny homes have a system. Your life safety is not there. You could have them built at someone's backyard. There is nothing that makes the building safe, or consistent. You could be bringing in homes that are unsafe.

Janice Loz: You don't feel they would have the same standard?

David Minton: With regards to these lots. Are they going to be sold to the buyers?

Joe Mendola: Yes, they will be sold.

David Minton: Millennial's want an urban environment, restaurants, book stores, and places to go. I cannot figure any millennial who wants to live in the sticks of Warner. I don't see this as being something that people want to live here.

Joe Mendola: I know people and see it happening. I see people who do. Continue to the next meeting.

Janice Loz: If you don't have enough tiny houses on this property, and you had empty lots, what would be your backup plan? Would you put in mobile homes?

Joe Mendola: I'm not thinking of that. I would be able to according to the ordinance. People are buying these tiny homes without a legitimate place to put them.

Rebecca Courser: Some of us are thinking that there are buffers. It is going to cost you a lot more to develop. After 5, 10 years, if you don't have some type of park agreement, then down the road you could put in whatever type of manufactured housing. I think that there is a lot to think about.

Janice Loz: We will continue to take public comments at the next meeting.

Board Action:

Motion by **Janice Loz** to continue this public hearing to April 11, at 7pm.

Sam: second.

Passed Unanimously.

COMMUNICATION AND MISCELLANEOUS:

Sam Bower: Would like to go on a site walk.

Howard Kirchner: Is it a site walk for everything? Is it kosher to think we might approve this? If it is something that looks like the board may not approve, are we going to change our mind after a site walk? We might want to think about something unofficial before we put it off another month.

Janice Loz: I don't want to do that now without the applicant, present.

Beverley – There will be triple the number of people next month. They seem so positive that they can do this without approval.

Janice: We can ask the town attorney. Put together your questions and we can put it to our town attorney or the NH Municipal.

Harry: I think town counsel will say that the Planning Board can weigh in before that. Any of the five criteria can knock it out before the Planning Board.

Barbara: He is framing it that the only way to do this is for Plan B.

Harry: He is trying to simplify it.

Decisions: Reviewed previous decisions so the board can see the final notice.

Janice: The Dragonfly decision spells out each of the criteria for a special exception. And we need to do that for each of our decisions. She would like to move to that or at least get the board to address each of the criteria at the meeting and have it documented in the minutes. If you say it in the minutes then we can put it into the decision.

Harry: I want to make a point with the Neokraft, when it came to making the motion, we made it so it was generic, you sort of read through the application. Then you approve or disapprove because. So you get each person's reason why they disagree. So that way you get the dissenting and the reason.

Janice: We usually know how everyone feels from the minutes.

Sam: But it does help to have it formed and then say it from start to end, with reasons.

Janice: in the past, we have made the motion and enter into a second discussion, to tease out a bit more of the member's point of view. And we can keep making motions until we get something that works. I never thought of just making a simple motion to vote, then each member stating their vote to approve or deny with reasons.

Harry: For example, if someone asked for a variance to Article IV, the individual members make their vote. If it's approval, usually nobody cares, but they do care about the dissenting.

Janice: In the past we have made a motion to approve or deny. It is possible to make a motion to make a decision, and then craft the decision at a later date to bring back before the board for a vote on the decision.

Sam: So we would make a motion to craft a decision would be to get everyone on the board to put their thoughts into the motion.

Janice: So you could craft it, then go away and craft the decision and come back to vote on it.

Sam: I am just getting comfortable with how we have it setup, with an individual member making a motion based on x, y, z, and ask for a second to see if someone is in your corner. Then through discussion you hammer it out a bit more. Then you say that this is the side of the fence I think I am on, and helps other board members as well.

Elizabeth: This is what is says in our regulations:

Motions: A member shall not interrupt another who is speaking to make a motion. If there is no second to a motion, the motion fails. There shall only be one motion on the floor at a time, except a motion may be made for an amendment to the initial motion. Only one amendment to a motion may be considered at a time. Friendly suggestions by other members may be made to

fine-tune a motion prior to debate. Prior to debate and voting the Chairman shall restate the motion. At the request of any member, the motion shall be put into writing.

Sam: *So should the chair restate every time, or only upon request.*

The way I debate is that one person starts the motion, we develop the motion, she reiterates it correctly,

Barbara Marty: So the chair will repeat, and put in writing if requested.

Janice: In the past, we ask the Secretary to read it back.

Howard: Community letters. Case is open now. We will get community letters. If the case is closed, and letters come in, are we wasting time and money by having things printed?

Janice: I do not speak for the board, so if things just came to me, it would not be right. I just have an issue of people thanking us for our decision. The secretary needs to forward letters upon request by the community.

Meeting Adjourned. 10:18pm.