

Town of Warner
Zoning Board of Adjustment



APPROVED Meeting Minutes

Wednesday, May 9, 2018

7:00 PM Warner Town Hall

1. OPEN MEETING and ROLL CALL

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|--------------|-----------------|---------------|
| Harry Seidel | Barb Marty | Sam Bower |
| Janice Loz | Howard Kirchner | Beverley Howe |

Elizabeth Labbe- absent

2. APPROVAL OF MINUTES – April 11, 2018, and site walk on April 19, 2018

Decision: Minutes of April 11, approved, unanimously as amended. (Vote 5-0)

Decision: Minutes of April 19, approved, unanimously. (Vote 5-0)

3. VARIANCE APPLICATION – Continued from March 14, April 11, April 19, 2018. Case ZBA 2018-02

APPLICANT: Joseph Mendola

Property Owner: Alan C. Wagner, Jr.

Property Location: Schoodac Road

Map #11, Lot 14-1, R3 district

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

Request for a Variance to the terms of Article XIII, section E of the Warner Zoning Ordinance, for the proposed use of 13 tiny house open space development, under the Manufactured Housing Park regulation.

Joe Mendola's comments on the minutes:

I would like to add points of facts, that you have gathered from planning or zoning, that don't line up with the conversation of certain board members. I would like to bring these to everyone's attention.

Page 4 and on page 15, Chair Loz says, "It is important to get it right. I would like to see somewhere that Tiny homes need to be built to the standards of HUD. I could not find that any place." My comment is in the letter that you asked of the planning board, which I thought was a really good idea, Ben Frost, the Chair of the planning board, wrote in his letter back to you, "if any house is considered manufacturing, they are subject to HUD standards." So there are standards. It's the HUD standards. Then Ben went on to say, "If a tiny home does not meet the definition according to those standards, then it is not a manufactured house. But if a tiny home does, which is a condition to our variance, then it is a tiny house." I would like to point out that there are clear standards and definitions that we are applying to a tiny house in this regard. So if a tiny home meets the standards, the HUD standards, in a manufactured housing park as a manufactured home, you have to understand that any structure built to HUD standards is a manufactured home, and allowed in a manufactured housing park, with or without wheels.

Janice: So your point is to argue what was said in the April meeting minutes, but not necessarily to correct the record.

Joe Mendola: What you said is correct. It is bringing facts to the declarations that were made by board members, and we have to get that straight because Ben Frost went to fairly decent lengths to explain this. Because before I even came here, I went to the planning board for a consultation, and I went over this chapter and verse. And he said, "yeah. You are good to go as long as you handle it." It is important that you go through these things because the information is clear and it is here and I want everyone to be aware of it.

Referring to our own zoning, Article XIII of our bylaws defines a manufactured house as “any structure”, a tiny house is a structure. “Any structure transportable”, which a tiny house is, “in one or more sections, which in the traveling mode,” which a tiny house is, “8 body feet or more in width, and 40 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...” so it can be on wheels, “when connected to required utilities...” And so that is our own zoning by-laws. So that is the basis from which I proceeded after meeting with the planning board, because I wanted to get their blessing on that. So the tiny house conditions that my counsel has put together is that because I wanted to get it right.

This should also address Ms. Howe’s concern on page 3, “there are no building standards or codes for tiny house.” There are. They are clear and they are in RSA 674 and in our own zoning ordinance, Article XIII. I plan to abide by those requirements, chapter and verse.

Beverly Howe: We don’t have a by-law or any law about tiny houses. We have laws about manufactured houses, which are trailers, basically.

Joe Mendola: You are absolutely right. Our laws have regulations for any structure. It could be a van if it met the requirements. What I’m trying to point out, we do have it, chapter and verse, because a tiny home is a structure. Your excellent question, but the point is we have chapter and verse a clear definition. A tiny house, and I don’t think there is anyone who can argue this, is a structure, any structure. That is where the disconnect was when certain statements were being made. So you have to go back to Ben’s letter, which endorses that also, which goes back to Article XIII.

Sam Bower: So any structure that meets the HUD standards. So not any structure. You could not have a wooden box on a trailer and be ready to go. I think that is one of the things that some of these people are saying, we understand that what you are asking for is a manufactured housing unit park. And we understand that there are standards that go along with them. But the new idea of a new tiny house is different from that. Lots of these new tiny houses are people who want to build in their backyards, have these little things, and be able to scoot around the country, and pull up and park somewhere. So I think that’s where the difference is.

Joe Mendola: What we need to understand is that this applicant is coming with every one of those points that define any structure as a manufactured house according to Article XIII, in the Warner by-laws. That should be the end of the confusion.

Janice: I have issue with that because it is a difficult thing to wrap our head around. I did reference the HUD website, and HUD defines a manufactured home as being built to manufactured home construction safety standards, HUD codes, displaying a red certified label. Manufactured homes are built in a controlled environment of a manufactured plant. So not necessarily any structure but a structure that meets the HUD definition.

Joe: A tiny house is a structure that... and what comes after that? A tiny house is a structure. If that structure conforms to the HUD regulations, then by definition it is a manufactured home.

Janice: I think the board understands, and I don’t speak for the board, but I think that the board understands that is how you define manufactured homes.

Joe: That is how HUD defines it. Not me.

Janice: Or, how to interpret what is before you. I think it is good for the board members to question and try to get to the bottom of what they are considering.

Joe: But to say there are no codes for tiny homes – that is simply not an accurate statement because there are standards developed by HUD.

Barb Marty: I have two comments. You said that Ben Frost said you are good to go and I was at that planning board meeting and Ben said, "I look forward to you coming back with something more than a conceptual plan." Ben never indicated that he was throwing his support behind this.

Joe: Absolutely, you are good to go to the next phase.

Barb: I looked up under www.tinyhousebuild.com and they have a great definition, and I will read the paragraph. Having a definition helps us to know what a tiny house is not. A tiny house is not a park model, travel-type, RV designated to provide temporary accommodations for recreation, camping, or seasonal use. A tiny house is not a manufactured home; manufactured homes are built by a certified manufactured plant as dwelling units of at least 320 sf with a permanent chassis to assure the initial and continued transportability of the home. As a point of clarification, manufactured homes are often mis-identified as mobile homes. However, the term mobile home only refers to manufactured housing built prior to 1976. Anything built after 1976, in this clarification, is officially referred to as manufactured housing.

A tiny house is not an RV, for travel or seasonal use. I think because throughout this application, the term tiny house is used. There is some overlap, but a lot of it is not overlap. This could be a problem in the future. If someone else comes and wants to do something with tiny homes, once the town had a definition. If we make a finding with a bastardized version of what a tiny home is, it could actually end up causing problems in the future. I think the applicant needs to go back and strike the word TINY HOME from this application, and resubmit it with the term manufactured housing so there is no ambiguity of what we are voting on.

Jason Bielagus: Ms. Marty, do you have an application handy? Please turn to details of request. The second sentence under details of request. Could you read that sentence please?

Barb: The long and short of it is that the term tiny home is used throughout.

Jason Bielagus: Could you read that second sentence?

Barb: 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".

Jason Bielagus: If you look at the details of request. "the sentence where it says, "In this application, the term tiny house", we are using the definition for manufactured housing."

Joe Mendola: We use them interchangeably.

Barbara: Then why don't you use the term manufactured housing so there is no ambiguity as to what we are voting on. You can't use them interchangeably. A tiny house is defined between 100 and 400 sf. And what you are asking for is a manufacture house...

Jason: Because there is no definition of a tiny house in the zoning ordinance for Warner. The term TINY HOUSE is not there. Do we all agree?

All: Yes.

Jason: So for this application, we are using a term, and we are defining that term as a manufactured housing unit.

Barbara Marty: But that is defined elsewhere, with different terms. If you go to any of the Tiny house websites, which are the only places I know to go, a tiny house is defined as between 100 and 400 sf.

Joe: If we had a regulation in this part of town, then you could do 3000 sf houses, there are houses that would not be allowed. There are houses that are 1000, 1500 sf but at 200 sf they would not be allowed.

So within this definition, 320 sf is within 400sf as defined. There will not be a home in there that is not 320 sf. That is where you get back to any structure. Manufactured house is any structure.

Janice: Would you accept that a FEMA trailer can be sold, after they have not been used, and a FEMA trailer is 8 x 40, 320 square feet?

Jason: That would fit the Town of Warner's zoning ordinance for a manufactured unit.

Janice: But it is also a pulled trailer, in the sense that it is very much like an RV.

Jason: Would you say it is transportable in one or more sections?

Janice: Yes. So is a camper.

Jason: A camper's overall length cannot exceed 28 feet. A camper has to be under 28 feet, and its weight cannot exceed 5400 pounds. So the item you describe would meet the definition of a manufactured housing unit, but would not meet the definition of a travel trailer.

Janice: But you cannot have an RV. I think the whole sticking point may be, that a manufactured housing park is tightly regulated.

Jason: They are regulated under RSA 206-A. Then RV's are found in a campground and that is under a separate regulation. So you have to look at the thing, and see its dimensions, and see how it is being used, and where it is. And that determines if it is a travel trailer or a manufactured home.

Janice: I think what you really get at is the intent of the ordinance. When it was drafted, what was the intent? I wonder if the intent was tiny homes since, at that time, there were no such things.

Joe: The intent was tiny structure. Ms. Loz asked me to do some homework. On page 9 how are you going to tax the owner of a tiny house who is transient? Well, the owner is not going to be transient, because they have to live there a longer period of time than a transient. It is a permanent residence that has wheels and tie downs on a slab. In order to conform to HUD regulations, these units have to be tied down, anchored into the slab, so that the winds like we had recently do not take them away. Ms. Loz suggests that the burden of proof is on the applicant to verify that these homes can be taxed as a piece of real estate. Right now we are talking a piece of land that yields the town \$27.00 per year in taxes.

Janice: May I clarify what I meant there? I want to clarify that when I brought up the tax issue, it was to get a better understanding whether this was a manufactured home, or a mobile trailer. That was my only reason. The ZBA cannot make their determinations about whether something is taxable or not. That was in no way my reasoning. It was just a question to determine if it was taxed as a manufactured home, or not taxed, such as a travel trailer.

Joe: That is the great point that you charged me with. And our tax assessor at that meeting said if it has a license plate, and is on wheels, you cannot tax it as a piece of real estate. And you said, rightfully so, that Joe it is up to you to prove otherwise. I had a conversation with Mr. Steve Hamilton the Director of department of revenue for the state of NH. And I said, Mr. Hamilton I need to bring back to my board proof that these homes, described to him chapter and verse. And I said to him, what is your proof for taxing something in that park as real estate? Steve Hamilton said that it was decided in 1999, a Supreme Court case, Preston v. Pelham. In that case the Supreme Court said, this is the litmus test (I don't care if it has wheels or a license plate.) If it passes these four tests, then the town taxes as real estate:

1. It must be permanent.
2. Completely enclosed
3. Dwelling unit
4. Must be stationary.

The Supreme Court says that if it meets that criteria, then nothing else needs to be done. It is taxed. The Supreme Court of NH has decided this. Thank you for charging me with that. Be clear, that these units will be taxed.

I want to address what Ms. Howe said, I appreciate all the comments. Ms. Howe brought up children which we all know does not relate to the variance. As a former member of the school board, we have a reduction off its peak in our schools. 14%, the cost of the gym, the cost of the repair for the buildings. And it is not low enough that we can have a reduction in force. What Kearsarge needs, is each additional body, the state will give us \$3,500 dollars that we are not getting right now. Even though, we need more kids in the school system because we want that money from the state that we are not getting now.

Beverley – You also said that these would be homes for two people. Yet you have two bedroom. Why two bedrooms?

Joe: They are a two bedroom loft. There is only one bathroom. I am building a tiny mansion across town that has nothing to do with a tiny home, except that it is small, it has 650 square feet. It has a different use. The reason I am building it is because the town of Warner prohibits a house on wheels to be on an individual lot. You cannot confuse what I'm doing across town which does not relate to the HUD requirement. It is town building code and has nothing to do with this. It is a two bedroom, two bedroom septic, and two bedroom loft. Ninety-nine percent of the people that I saw at the workshop were single parents. Most of the ones I saw were adults.

Janice: I do want to remind the board that we cannot make a decision if there is a tax base, or if there are children, or 2, 3, 4 or 5 people in the structure.

Joe: Our zoning ordinance says that a manufactured home is any structure. There will not be a house that is under 320 sf. I need a professional installer to tie those units down. HUD requires this.

Harry: I have a question for Joe. Jason referred to chapter RSA 205-A:1. It says that “manufactured housing includes but is not limited to manufactured housing as defined by RSA 674:31, and also includes any pre-fabricated dwelling unit which...” and then it goes through a list. But nowhere in that list does it say 8 x 40. So I am asking you, is an 8 x 30 platform, with an 8 x 10 loft also a manufactured housing unit? By your definition?

Joe: The Warner zoning by-laws supersedes that. It is more clearly defined to eliminate things I do not want in my park. I am working on Article XIII which is much more specific and to the point.

Jason: The controlling definition is what Warner said which is “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. A mobile home is a manufactured housing unit. A travel trailer is up to 28 feet and is located on a campground. And in the town of Warner, that is how you distinguish these various things.

Harry: In the minutes of the April 11 meeting, Joe, you said that I believe the HUD standards supersede the town.

Joe: The HUD standards and the Town's are identical.

Harry: I think the local standards always supersede the federal standard.

Jason: You should have a lawyer check that.

Harry: We will always have a lawyer check that, but I think the stricter standard always prevails.

Joe: It says it right here, “The HUD standards supersede the local town standards.”

Janice: In a minute...we will get back to people making comments on the site walk visit. I was wondering, for the purpose of the record, when this was submitted there were two plans. Reading the minutes, and listening to

Jennifer, one is the cluster and one is the yield plan. Could we refer to those as the yield plan, and the other as the cluster plan?

Jason: The yield plan is more spread out and complies with the zoning ordinance. And the cluster is the one we are asking for a variance.

Harry: Are you referring to the site visit?

Janice: Yes, we kept referring to the plan and the non-plan. The yield plan is the one that meets the requirements (with houses spread out). The cluster plan is when they are closer together. I am proposing, that is what we will call them to avoid confusion.

Harry: So the yield plan is the spread out plan.

Jason: Before we get off the where HUD comes into this. In the Warner Zoning Ordinance, Article 13 section G. 2, is where you got the reference to HUD.

Manufactured housing placed in a manufactured housing subdivision shall conform to the construction and safety standards established by the Federal Department of Housing and Urban Development. However, it is not required that they meet with the Warner Building Code requirements for a permanent foundation and a minimum of 500 square feet of ground floor living area.

Janice: As long as they meet the HUD standards.

Jason: Correct. It is not that we are looking at HUD and Warner, and trying to figure out who has precedent.

Harry: I would like to make a comment about the manufactured housing stamp. I believe that HUD requires a stamp on the units because by doing so, they can certify that a manufacturer, that everything done inside that structure is done to proper code. So if people are putting together their own tiny home that does not have a stamp that does not mean that the minimum standards are met, even though they are not as strict as the town's requirements.

Janice: I think it also determines if they can get a certain kind of financing.

Janice: Does anyone want to make a comment about the site walk visit? We will start with abutters.

Maureen Hampton: I was a little disappointed that I did not see measuring tapes, where the buffer was, where the slabs will be. I did not get a feel of what I will see from my house. I could see my house as we walked through the woods. It did not stand out because of the color. That would have been nice if it was pointed out. That was something I was hoping to see or understand. I did not have that clarity.

Janice: Have you measured from your house to where a structure would be close?

Maureen: I could not tell where it was.

Janice: It was one of the first sites we saw on the map.

Maureen: This is my driveway side, and my house would be around here. I was just wondering how close that was. I have a lovely home. It is well maintained. I can get a feel, but I was hoping that it would be brought out. It was one of the things I had asked. Because the public could not speak, I did not bring it up during the walk.

Jennifer: I know the location of that structure is 50 feet from the property line.

Nancy Martin: I am the chair and am representing the conservation commission. Three members went on the site walk visit. Scott Warren, a botanist and former faculty member of Connecticut College. Suzie von Ottengen who is a biologist, and myself. I felt we had some good representation. We started on Schoodac, which abuts the property. We looked at Barclay Brook which needs to be crossed to access the property. We commented

that it was a high-functioning wet-land. The brook spans from 10 to 8 feet across the banks on either side with riparian creatures on either side, so extensive wetlands along the brook. To access the property, you need to cross Barclay brook. This is the stone and metal culvert which is probably 3-4 feet in diameter. We were interested in the final expanse of that road, which would have to be built to town specs, and we were told the road would have to be 55 feet wide, nearly 3 times the crossing that is there now. The road rises beyond the culvert, and as it does, it passes three large vernal pools – two on the right going up the hill, and one on the left side. The vernal pools were not delineated on the map, and there was no comment about how they would be protected.

Jennifer: I take exception to that because the vernal pools have not been delineated, and when we were on our walk it was not the time of year to be able to accurately delineate the vernal pools.

Nancy: As you cross the brook, there are two vernal pools up here, and one here (note: Nancy pointed to the plan). A lot of the delineations were not clear on the map, including the housing units. Vernal pools are important because they are dry in summer, they are very wet in spring, all provide a food source for frogs, turtles, salamanders and insects which provide a food source for all the critters in the area. We feel it is important to protect the vernal pools. As the road goes pass the vernal pools, it reaches a flat area and our understanding that there would be 3-4 housing units there, in this flat area; it appears this was once a gravel pit. But the flat area, again, was designated where some of the housing would be, but the wetlands identification was done when there was snow on the ground. The day we went, there was no snow on the ground. It was quite wet. It had shrubbery that only grows in wetlands and is not designated on a map. We feel strongly that this is wetland. We feel strongly that a wetland scientist needs to go out there and delineate the wetlands which are different than when the map was made.

Beverley – is that where the four units are?

Nancy: The area where four units are located is quite wet right now. It could be that when they took the gravel from the area, it creates a problem. So we are mostly concerned with the delineation, clear and scientific delineation of the wetlands because we believe that if you have to deduct this area here, which is wet, from the area that was calculated for housing units that will require a change in the plan. There are a number of conservation commission members here, Alice Chamberlain and Michael Amaral. It could be that when they took all the gravel out of there, it got down to the water table.

Michael Amaral – I will respond to the comments earlier. Vernal pools can be located in uplands and often are. They are small areas where water collects and forms a temporary pond.

Sam: Getting to a little bit about the variance request, is the size requirement for these lots. As I walked up through this, on the site walk, one of the things in the application, the request for the variance is saying that the clustered design will bring a smaller environmental impact. My question, a lot of these units, if not all the units if I'm not mistaken, have not been placed exactly. They have been sectioned off. With the clustered units, it seemed to be there would be one large area of disruption no matter what. So you have to take x amount of whatever is there. Take it out, and push it around, fill in the wetlands. My question is, 'in the single unit design, would there be more leeway to pick and choose, from an environmental standpoints, would it be more of a burden on this lot, to have big expanses that have to be excavated to fit two to four units. If you can pick and choose, because I am only fitting one unit here, squeeze it into this spot, without disturbing too much. Looking at the site, it seems you could find way some ways around these tricky spots by sneaking your little single units in here or there.

Nancy: My understanding is that if you did 13 single units, it would require a road that went farther up the road, to fit in the 13 units it would also involve disruption. Not as much impact on wetlands because it is less wet up there. But to get the road and the sites managed, it will take a lot of erosion and disturbance of the soil and the plans.

Jason: Are you saying the plan on the left is a greater impact on the environment than the one on the right?

Nancy: No...it is just a different impact. It is farther up the hill, there is a granite boulder I am fearful of the wetlands.

Jason: Are you saying that the plan on the right has a greater environmental impact? Are you saying that the two plans have the same impact, more or less?

Nancy: I am saying that if you space out the units so they are individual, there would be less congregation of houses, and a smaller area, and perhaps less impact. Less impact from one trailer to four.

Jason: The plan on the right has 13 units, and one on the left has 13. Are you saying the one on the left, or the one on the right has more impact? I do not understand.

Michael Amaral: I think we are struggling because we have not seen the wetlands delineated. We would want to see the acreage of wetlands that are impacted. Just because you can get 13 units on the left or the right, it does not mean that economically or practically you could actually build them.

Jason: Is wetlands something that the ZBA handles, or the planning board, or the DES?

Michael Amaral : DES issues wetlands permits with input from the town.

Jason: So the ZBA does not issue wetland permits. Why are we talking about wetlands permits?

Michael Amaral: Because we are looking at environmental impact.

Beverley: I have a question about 3 septic systems, and 3 wells, in these wetlands?
How big of a septic system, and the well? I know there are a certain number of feet between each. And you are doing four homes with 8 people – that is a big septic.

Jennifer McCourt: Normal residential lot is designed for 4 bedrooms, with a 75 foot diameter well. With the four units, and one septic, you are looking at 8 bedroom. You are still looking at a 75 foot diameter well for NHDES standards. The septic is designed for 8 bedrooms. The leach field is shown on the plans. I did test pits out there. I am a certified septic designer, and a professional engineer. For the four units, I dug a test pit there, where a leach field could go. I placed the well out front, with the well radius out here. So the 75 foot well radius would be contained. And then septic would be outside of that.

Because that is a planning board and DES issue, I have not designed those yet. Because that is a planning board issue, and a DES issue, I have not designed those yet. Because we have the 5 systems here, compared to 13 systems here, and we have a longer road, and a bigger yard for the individual units, it is my opinion that there would be a greater environmental impact on this one than this one.

Griffin Manning: The units are being designed for a 2 bedrooms per unit, so the septic is designed for 2 bedroom.

Janice: That is something for the Planning Board to determine.

Jennifer: NH DES has a minimum septic system to be for a 2 bedroom house, so I cannot design anything for less than that.

Griffin Manning: I am coming late to the party here. I would like to hear what is happening. I would like to wait and learn what is going on.

Gerald Marsh: I am wondering with the septic design, are there provisions when the septic fails, to upgrade the system?

Jennifer: There are areas to place it, but NH DES allows you to replace it in place.

Michael Amaral: If someone owned their own self constructed tiny house, could someone move their tiny house to one of your sites?

Joe: The answer is no, unless it is a HUD approved unit, with a 320 sf 8 x 40, the answer is no.

Jason: We had said earlier. I submitted something that referenced two standards.

Alice Chamberlain: Madam chair question for the applicant. I don't understand why they cannot revise their application, and strike Tiny House, and proceed with Manufactured housing. I'm not sure it is the rational for proceeding that way.

Janice: I think that is something we will address.

Sam: We could address it right now, and we probably should. It seems that in the application, the terms tiny house and the town definition manufactured housing unit are interchanging. Due to the confusion, I think that we should have it changed. Change the wording to strike tiny house. It is there, and it is stated on the second or third page, but we just keep going around and around. So, it seems the easiest thing to do would be to change it.

Janice: I agree. And it is a process. But we won't be making any changes until we get to a point to make a motion. We have not come to this determination until the third meeting into the process. We have to finish the public hearing. If I am wrong, let me know.

Howard: We did accept the application.

Beverley: I would like to suggest that we go to town meeting and identify tiny houses. I don't think it's an awful idea. I think we need a whole set of rules, and criteria, and establish what we are doing. I think you could put a trailer park in there if you want, but this is something else.

Joe: That is a good question. We tried to be transparent, we gave you a picture, and the planning board letter confirms that any structure, and the word we are using to define a structure is a tiny home, and that is for transparency and clarity, so we all know what we are doing, as long as it meets the definition of Article XIII.

Sam: That picture that was submitted with the application, do you know if that trailer, specifically, meets the HUD requirements for the standard?

Joe: No, I am showing you that for design.

Sam: So that trailer that you put as the picture your application looks to me to be an 8 x 12, and this is the confusion, you put it in your application. The confusion is the idea of a tiny home isn't an 8 x 12 with wood shingles that was built in your backyard. To avoid the confusion, it should just be changed. If we should vote on that later, then perfect.

Steve Lindbloom: I am curious about one thing. Is this tiny home really a structure? I keep hearing it called a structure. Is it really a structure? I remember years ago, a structure was something that had to be permanently connected to the ground. I don't see how these are permanent.

Joe: I need to address that. Our zoning regulations, chapter and verse, say that any structure that is with or without a permanent foundation, that meets the HUD regulations, is a manufactured home. When you are putting someone in a home, with a roof over their head, to provide shelter and safety, it can be thought of nothing other than a structure, and this structure meets the guidelines.

Steve Lindbloom: So you are all in agreement that these are structures?

Janice: No.

Sam: A manufactured housing unit.

Lucinda McQueen: I was here at the last meeting. I specifically remember Joe Mendola saying a six month lease on the property, and now he is saying permanent. So which is it? Also, the idea of tiny houses is such a

coy thing. That is BS. It is a trailer park. You don't need 13 of those things on lovely wetlands, and higher elevations. So as far as providing something for millennials is BS. Dropping in a trailer park in a place that should be left alone. For the 38 years I've lived in this house, we have a zoning ordinance. We have a planning board that is for thoughtful growth. When people decide that they will arbitrate what is thoughtful, that is not appreciated.

Andy Bodnarik: I will refer you to the minutes on April 11. I would like you to read the letter that was from the planning board. Page 2.

The consensus of the planning board is that only those dwellings that meet the definition of manufactured housing are allowed under Article XIII. This definition is in the ordinance at XIII.C.1, which is identical in relevant section to the state's definition of manufactured housing found in RSA 674:31. Any mobile dwelling that is less than 40 feet long, less than 8 feet wide, or less than 320 square feet area is not manufactured housing. For a mobile dwelling to be allowed that does not meet this definition would require a variance to the definition itself.

So, there is a reference in our definition to RSA 674:31. We are bouncing around and around in circles. The current zoning ordinance has a definition of structure. I put it in alphabetical order in my list. "A structure means that which is built or constructed." It does not tell you very much. That is the definition that was amended in March 2007.

Janice: That does not help us very much, does it?

Andy: When it gets into whether the ZBA has any authority with concerns of wetlands. If you go to manufactured housing park. Item E. The last sentence:

"Housing sites shall not include wetlands, water bodies, roads, severe slopes, or open space on individual sites."

And I have one question that has been bothering me since the beginning. How many lots are we talking about? There is a different definition for a lot and a site. If you look in your ordinance

"Lot" means a parcel or portion of land separated from other parcels or portions of land by description as on a subdivision or survey map, or by metes and bounds, for purposes of sale, lease, rent, condominium conveyance, building development or any other reason.

We have a definition of Lot, which is better than definition of structure. When you go back in your definition. I don't see, unfortunately, a separate definition of Site. So good luck because you are lacking definitions of simple terms.

Janice: Under Manufacture Housing, Article XIII, E.3.

Site Size: Each individual house site must contain not less than 15,000 square feet and shall have a depth of at least 150 feet and a frontage of at least 100 feet on a public or private street.

Jason: E. 3. That is what our application is for.

Andy: You have not defined the word site. That is your problem. What is a lot versus what is a site.

Jason: There are lots under manufactured housing subdivisions under F, but we are doing a park under E. So there are no lots, it is sites. Manufactured housing Park.

Janice: I see what you are saying about the difference between site and lot. But under the manufactured housing park regulations, it does not reference lot, it references site.

Jason: In a park, there is one lot, and sites on that lot. In the subdivision is where there are individual lots, but we are doing a park, not a subdivision.

Janice; It does not say that specifically. But that is not our fault, we do the best with what we are given. We do the best we can.

Amy Manzelli, representing Maureen Hampton:

Amy Manzelli, from BCM Environment Law, representing Maureen Hampton. Maureen pointed out her house, but to clarify, I have a couple of comments. I want to put into perspective the nature of legal relief which is represented tonight. A variance is a special type of relief that the town voters have decided is not legal. If you need to get a variance to get what you are proposing, that means that what you are proposing is unlawful. The requirements are very strict. It is a high burden to meet.

RSA 205:A was mentioned. That manufactured housing parks are strictly regulated. RSA 205:A does not regulate manufactured housing parks in the ways that have been talked about tonight. It does not talk about construction standards or tie downs. What that does is sets up a landlord tenant relationship. So it clarifies that someone living in a manufactured unit in a park has the status of a tenant. Then the owner of the property would be a landlord. Landlord cannot just kick out non-paying tenants. There is a judicial process that they have to go through. That is what that statute does. It does not talk about the land use concerns we are focused on tonight.

Environmental impact - One of the strict requirements that an applicant needs to prove is that the project is in the public's interest. It is in that prong that zoning boards should and do consider environmental impacts, such as wetlands and septic. Obviously everyone agrees that you will not be approving a septic, or a wetlands permit, but you should certainly be thinking about those environment impacts in terms of if the applicant has met its burden or not.

Tiny house vs. manufactured housing unit - I think there is a disconnect here: I think that the board understands that types of tiny house are not allowed without limitation in the Warner zoning ordinance. I think it is a problem with this application, and I think the board understands that it should deny the application on this ground.

I ask that you read it carefully. Just for the record, Maureen's lot is Map 11, lot 18. This lot has been Maureen's home for 30 years. It is hard to tell on the plans, eyeballing it, we think it is about 150 feet from Maureen's home and the nearest manufactured housing unit.

Three legal issues:

- 1 – lack of determination of regional impact.
- 2 – has not proven unnecessary hardship or diminished property values
- 3 – applicant proposes 13 housing units without establishing any dimensions for those sites.

1. Lack of determination of regional impact. Land use boards are required to reach a determination of whether a project has regional impact. I think this project might have potential, but will leave that to you to decide. But even if a project was the smallest project in the world, and smack dab in the middle of humongous town, the board is still required to make the determination. As far as I can tell in the record, there has been no determination of potential for regional impact. In the absence of making that determination whatever decision you make would be reversible on the grounds that you failed to make that required determination. There is law in the state of NH that says when a board does not make that required determination, they are not vested with the jurisdiction to make decisions on applications. So tonight, or at a different meeting, perhaps after the advice of counsel, I urge the board to determine if there is regional impact.
2. The applicant has not proven unnecessary hardship. When you look at the law, it is indisputable that one of the standards is to prove unnecessary hardship, you have to show that there is no special condition of the property, or you have to show there is a special condition of the property that distinguishes it from other properties in the area. You have to show that there is something special about the subject property that

make it different from other surrounding properties. The applicants claimed four things: 1. 390 feet of road frontage. 2. Presence of wetlands, 3. Presence of steep slopes, and 4. The power easement.

Tax map 11, of the Lower left corner, 14-1. Right below that you can see a triangle and that is Maureen's lot, identified as lot 18. Is this the only property that has 390 feet of road frontage? You can see that there are many properties, in just this tax map alone, have even less road frontage. This is not a unique characteristic of this property.

The Utility ROW. You can see that at least the two abutting properties also have a utility ROW. I looked at the adjacent tax maps just to make sure that the utility ROW is not limited to those three lots, and you can see that it is not limited to those, in fact it runs right through the town and many properties have a utility ROW.

I printed one adjacent lot, and it is lot 7. You can see that going right across the map, in the middle, is the utility ROW. Many properties in the utilities are subject to the utilities ROW.

3. The next map is NH - we looked at the steep slopes. I have outlined the subject. What you can see with the squiggly lines, those are the topographic lines, you can see the property order. Most of the properties in this area also have steep slopes. This is not a unique characteristic of this property.

The last one is a wetland map from the wetlands inventory, a government map. You cannot quite see the subject property. The green and the blue are the different types of wetlands, the area is modeled with wetland everywhere.

It is not an aspirational requirement that the property have special conditions that distinguish it from other properties in the area. It is a threshold legal requirement. There is no evidence in this case that there is anything special about this property that represents hardship.

If you disagree with everything I've said (about there being no special conditions), the applicant still does not satisfy this. They have to prove that there is no fair and substantial relationship between the general public purposes of the ordinance and the specific application at issue (request for the park), and the proposed used is a reasonable one. So that is the first path to prove unnecessary hardship.

The second path that the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The applicant has not satisfied either one of these prongs.

For the first option, the general public purposes of the minimum dimensional requirements for Manufactured Housing Parks are specifically to prevent overcrowding of manufactured housing parks and to set a maximum density of those parks.

The variance would go directly against those public purposes by allowing the number of units allowed on a full lot to be located on approximately two-thirds of the same lot without providing any dimensional detail what-so-ever. In other words, much denser and more crowded than what was designed to prevent. Too much density is too much overcrowding.

With respect to if the use is reasonable or not, the use is not reasonable. This is not an application that seeks a variance because there is no other reasonable use that can be made of this property. That is not what is going on here.

What is going on here is that the applicant is seeking a variance because he can't do exactly what he wants to do without getting a variance. This is not the standard for unnecessary hardship. You do not grant variances because the applicant can't do exactly what it wants to do. You have to prove these desired standards. To pick up on Mr. Bower's earlier question, the board, of course, is under no obligation to approve 13 units on this lot.

There is not any evidence that 13 units is the one and only reasonable use that can be made of this property. It may be that a 3 unit park could qualify for a variance, but this 13 unit proposed park does not. Building units that comply with town law would be reasonable use of this property. And that appears to be possible. There isn't any evidence, for example, that the yield plan design on the left could just be shortened. Maybe they build the first 8 units appearing on the plan, and it will conform in not having a long impactful road, and complying with the dimensional requirements. There is no evidence in the record to show that that is not a reasonable, viable use of the property.

A couple different ways that the applicant has not satisfied the unnecessary hardship requirement.

With respect to property values, which is another one of the important factors, there is nothing more than unsubstantiated statements from the applicant, or the applicant's attorney, I don't see any evidence that either one of them is a licensed appraiser or qualified to render real estate opinions.

The applicant seeks to site 13 units without establishing any dimensional measurements.

So in a more typical variance context, an applicant would be subject to, for example, 150 foot of road frontage but there is only 118 feet; it is the way the lot has been forever, and they need a variance because they want to build a new thing on non-conforming frontage. Or the depth set back should be 250 feet, it is only 240 feet, they need a variance to add an in-law apartment and they aren't conforming. In other words, most variance requests have two fundamentally different aspects from this request. 1) The variance itself, in other words the request of non-conformity with law is relatively small. 2) There is a specific number that is provided. It is not a request to do away with an entire set of dimensional requirements. That's exactly what this request is, and that is highly unusual. Imagine the issues that will arise when one home owner, a manufactured unit owner, does not know when one area ends, and the other begins, and there is some sort of spat over that. The town is going to get those complaints. And what will the town look to? The town will look to plans that don't have these dimensions at all because the variance was granted, if you grant a variance, for a free-form dimensionless park.

This is quite a different creature than most variance requests.

The last point is with request to the nature of the variance request. I believe, also, that they will need variances from sections E. 4, 5, 6. I don't think they have provided anything.

4. *Placement: No individual house site shall contain more than one manufactured housing unit. No manufactured housing unit shall be placed closer than 150 feet to an existing residence or state or Town road nor shall the unit be placed within fifty (50) feet of any other boundaries of the park.*
5. *Marking: Each house site shall be clearly marked on the site plan.*
6. *Setbacks: Front yard setbacks shall be at least 25 feet. Rear yard setbacks shall be at least 20 feet. Side yard setbacks shall be at least 15 feet.*

We respectfully request that the board deny this application at this time. There is no need for the applicant to strike the tiny house. I think you can just deny the application.

Janice: Does the board have any questions?

Griffin Manning: I am just going to ride on her coattails. Having listened to what is going on tonight. I am amazed that this has gotten this far. I've been here all my life. I have always thought of R3 as rural. I have always thought of R3 as a 3 acre lot per house. If you get up on Schoodac road, is there any cluster housing in R3?

Beverley: No, not that I know of. On the way out of Warner, there is a structure that looks like a hotel. That was an early attempt at providing small spaces for young people, and you see what it looks like.

Griffin: I am not against a tiny house, or against the plight of millennials. It's the plight of every 40 yr old, it is not just millennials who need to find affordable house. I just think the placement is incorrect. That lot can easily be used for homes. It can be sub-divided into 3 acre lots. There is already road roughed in. Many of those nearby houses are houses on a large piece of land. If you are driving down that road, you would see one house, one

house, one house, 13 houses, and then one house, one house, one house. I don't see why a variance would meet merit. I don't think there is anyone in this room that would disagree that Maureen's house would be less valuable. Her resale value would be less valuable. When you have transient neighbors, they can be the best people in the world, but that house is not going to sell at the same price.

That does not impact me as much. That piece of land used to be connected to my land. I have been running through those woods for 40 years. I know exactly what is out there. If this variance is allowed, you have no leg to stand on when someone comes up with a request for a similar variance, you have nothing to stand on if someone else comes up with the same plan. The 100 acres I have, right off of 89, does allow for mercantile, I could put a Walmart in there. What you can do, and what you should do are two different things. If you wanted to put 3 or 4 affordable houses on that land, I'm all for it. I have no dispute with any of that. But 13 units on 2 or 3 acres, and leave the rest for common land, when the tiny home has come and gone, it will become a trailer park. They are not going to sell lots. Nobody is going to own them.

Janice: He will rent the sites.

Griffin: If the tiny house thing burns out, he still needs to fill the lots with something. If someone bought my land, and decided that they bought 10 acres it says I can put up to 25 units for a trailer park.

Jason: I have a number of points from the last three meetings. People are afraid of trailer parks?

Janice: Please address the board and not the audience.

Jason: What do people mean by that? Trailer park does not show up in the zoning ordinance. What does show up is a manufactured park. Here are manufactured housing units, and manufactured housing parks. In 1999 the town decided you can have manufactured housing parks anywhere in Warner, with a lot of over 10 acres, except for C1 or B1. So there were concerns that having a manufactured housing park is inconsistent with Warner is not what the town decided in 1999. They decided you could have manufactured housing parks everywhere, except C1 and B1. This is R3, and the lot is over 10 acres. So by law, they have a right to do up to 25 manufactured housing units. The proposal is for much less than that.

This plan on the left, the Yield plan, this shows what the lot will look like without a variance. My sister in the law suggested that the use of this lot was illegal. That is not accurate. This is what it will look like without anything. You would get 13 units on this lot. What we are asking for is this plan. It is the same number of manufactured units.

There were concerns about density. Both scenarios have 13 lots. It is the same density either way. There were a number of concerns about a Tiny House. I understand if you go online, or watch certain shows, that word may be used differently.

The word Tiny House does not show up in the Warner Zoning Ordinance. We defined it as a manufactured housing unit, which references the HUD units. There was some discussion about resubmitting the application, and striking the term tiny house and inserting manufactured housing unit. That is possible. A much more efficient way is you can grant it with conditions. Condition 1 – all units in the park shall comply with the Town of Warner's zoning ordinance requirements for a manufactured housing unit. There is no need to amend the application. You can do it by putting that condition into your approval.

Sam: It seems easier to me that we remove the confusion by removing the term tiny house to manufactured housing unit. Then you can still meet the conditions, for the definition of the manufactured housing unit and call it a manufactured housing unit.

Jason: Or, it can be done either way. I am just saying the easiest way to do it.

Janice (question to applicant, Joe Mendola): Do you have a problem if we remove the term tiny house?

Joe: No problem at all.

Jason: You can just do it by a motion. Or, we can do it another way.

There was some talk about lots. I think we addressed this. This is not for a manufactured subdivision, it is a manufactured housing park. There are sites, not lots.

We are asking for a variance as to the dimensional requirements of these sites.

There was question about State Law and HUD requirements. Those apply regardless.

There were concerns about families. That is not part of zoning variance.

Same thing with the tax consequence. In my letter, I talked about how you tax a manufactured housing park. The entire lot gets taxed, and then each unit gets taxed. That is in the real estate tax section. Just in case that real estate tax section is not entirely clear, you have chapter 477: 44 II – Manufactured housing as defined by 674: 31 – shall be deemed a building for the purpose of paragraph 1 when such housing is placed on a site and tied into utilities. That is what they are looking at on the state level. Your zoning ordinance has additional, more specific, requirements that we've talked about.

We heard from the conservation commission. They were unsure which would have a great impact. But those environmental issues are all governed by the DES and the Planning Board. That is not part of the zoning determination.

There were questions about the driveway – that is a separate regulation, done through the Planning Board.

Questions about the septic system – you apply for a subsurface permit through DES and the Planning Board – not a variance analysis.

What you look for in a variance is a person is entitled to a variance when they show:

- (1) the variance will not be contrary to the public interest;
- (2) the spirit of the ordinance will be observed; and
- (3) substantial justice will be done.
- (4) value of surrounding properties will not be diminished.
- (5) literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

For the purposes of this sub paragraph, unnecessary hardship means that owing to the special conditions of the property, that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provision, and the specific application of that provision to the property, and the proposed use is a reasonable one.

So under that definition, we meet the requirements of unnecessary hardship.

The variance will not be contrary to the public interest. A manufactured housing park is allowed in R3 district, and that is what we are doing. So that is not contrary to the public interest.

Spirit of the ordinance is observed. This is an allowed use. This is in conformity with the ordinance.

Substantial justice is done.

What we are trying to do will increase the setbacks at the front of the lot, and the sides of the lot. It will be giving the public and the neighbors more setbacks. In that light, it is doing more than the protections afforded under the existing ordinance. Substantial justice will be done.

Values of properties will not be diminished. I really liked this one hand-out that we had here. So if you look at the map. When Maureen exits her house, she sees an active sand and gravel pit operation that is directly in front of her. And if she turns to the left, she sees a house that is falling down, and is condemned. Given that you are in a neighborhood that has an active gravel/sand excavation going on, and a house that is falling down, it defies

credibility to say that this development, that is an allowed use in this district, would have a negative impact on the property. If anything, it would be more positive than a sand pit, and more positive than a condemned house.

Let's talk about the literal enforcement that would result in unnecessary hardship.

Unnecessary hardship comes back to owing to the special conditions of the property that distinguish it from other properties in the area. Amy did a good job of explaining this. There are other properties that less than 400 feet of frontage. Other properties that have a PSNH easement, and slope, but there are no other properties that have wetlands and have all of those at the same time. So that is what makes this lot unique. This lot has all four of those at the same time. There are other properties that have significant slope. You have an extremely narrow lot. You have the Barclay Brook, then the easement, then you have slopes that are 25% grade. This is a unique lot. There are no other properties that have all of these at the same time. It has all four of those qualities at the same time. That is what makes this lot distinguishable from others in the area.

Looking at no the fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to this property. Again if we look at the general public purposes of the ordinance, you can have up to 25 units. This is what it will look like. If we do this development, conscious of the contours of the land and other conditions that are there, this makes more sense. You see that the public purpose of the ordinance is not different from this. There is no violation of the public purpose of the ordinance by doing the plan that is proposed. There is nothing fair about forcing the development look like this (allowable plan), as opposed to the proposed plan, when you have a lot that allows up to 25 units in this district. It is not unfair to put them into this arrangement.

The proposed used is a reasonable one. Again, if this is what is allowed, and just varying the layout a bit, to get an arrangement that follows the contours of the land, that is not unreasonable. It is very reasonable. A lot of our presentation at the first meeting was geared to relative to what is allowed, this is extremely reasonable. In fact, this makes more sense because you get more of a buffer. The proposed use is reasonable. Given that you have a lot that has 4 conditions simultaneously that distinguish it from other properties in the area, and there is no fair and substantial relationship between forcing the development to look like this, as opposed to the proposed plan, and that this is reasonable, we do meet the fifth requirement of undue hardship.

Jennifer – I would like to clarify that the four conditions of the site. It is not lot frontage, it is lot width that is the 390, as compared to the length which is close to 2008. It is a long/narrow lot, and not just the frontage itself. Somehow that got twisted and I wanted to make sure that was clear.

Jason: I feel we have addressed a lot of the issues that were raised. I would ask that you grant the proposed arrangement, the cluster plan, or in the alternative, to grant it with conditions. I believe I gave you a copy of the conditions that I think everyone will agree to.

Janice: You need a variance to the 15,000 sf site, and the 100 feet of frontage. But you don't know specifically amount of feet per site. But you don't know the actual feet you need.

Jennifer: We are looking more like a condo development. These sites will be leased. As far as knowing what your boundaries are it will be part of the lease itself. Where you have the site setbacks, the distance between each unit will be 30 feet minimum, which is twice the required site setback.

Janice: Usually when we hear a variance to the terms of something, for example the 15000 sf, someone would say that they want a variance to the 15000 sf and want it to be, for instance, 30 sf. But you don't have that.

Beverley: If our town already allows the yield plan, and it has 13 units on it, why don't you just do that?

Joe: More environmental impact.

Beverley: Oh, you think so? But you don't even know where the wetlands are located.

Jason: We went over this in the first meeting. If you look at this road. The proposed use the road ends after the curve. In the allowed use, the road continues on and had more of an impact on the land. And you have all these

sites spread out. So if you look at the lot that is disturbed, it is a much larger part of the lot. In the proposed plan, you are leaving more of the land undisturbed.

Beverley: That is the land that is up top. But what you are really disturbing in the wetlands which are down here.

Jennifer: You have to disturb the lot either way to get the road in, and to get the individual driveways in.

Beverley: So the environmental commission will decide.

Howard: No, we have to decide.

Beverley: Do we ask them to take care of it?

Jennifer: Also, when leaving large open spaces to the rear, it is more disruptive to wild life. Also, we heard from the conservation commission that we have already disturbed the area in front. We are minimizing how much we disturb going into the site. Quite a bit of the road is on an existing road that was put in.

Janice (asks the board): Would you like to close the public hearing and start deliberating?

Jason: One part of the decision should be that it cannot be reasonably construed as having regional impact. To say that part of the decision it cannot reasonably be construed as having potential for regional impact. I would advise the board that it cannot be reasonably construed as having regional impact.

Ed Mical: It was talked about that this is a road going into this. That is a driveway. It is a one lane road going in. Fire protection needs 30 feet apart in between.

Howard: Motion to close the public session.

Sam: Second

Unanimous approval to close the public session.

BOARD DELIBERATIONS

Sam: I have a couple of concerns about the clustered design. It was just brought up it seems to me that units that close together does pose a safety risk. There is a fire risk. If they have to be tied down, there must be potential for them to blow away. If they are stacked up there it can be a risk.

Amy Manzelli brought up - properties that are close by, they figured out how to build on those steep slopes and use their road frontage. The two designs that can be used without the clustered design have been worked around already. That is where I sit.

Janice: Do we want to deal with the terminology of the tiny house.

Sam: I think we should stick to the variance first, and see how things shake out and regional impact.

Howard: We should address regional impact and put it to bed. I see no regional impact. I see nothing at all. It is in the middle of a town. Webster is up the road a few miles. I do not see any regional impact.

Beverley: Regional impact is not my concern.

Harry: I have a little trouble with the cluster concept. That is where my feeling comes in on the regional impact. What we are looking at is a request for an area change. But really, it is the open concept. When you look at open concept. There are certain attributes, purposes, for that – preserve natural resources, reduce perceived density, and provide privacy for dwellings. It's the open space development. I don't see that the change they are looking to do here is going to serve that purpose. I don't see how that is at all serving that purpose. When I look at the variance request, it seems it is a use request, instead of an area request. We are asked to look at a much higher

density than we would have to look at in an open concept framework. This is a much denser development pattern than is in the R3 district.

Howard: What does that have to do with regional impact?

Harry: It is the impact on the character of that district. It may not be regional impact on New London or Lebanon.

Howard: It is mostly environmental. I see no environmental regional impact other than any other house built on that road.

MOTION

Howard: Motion to conclude that there is no regional impact consideration necessary in this application.

Sam: Second.

DISCUSSION

Barbara: We are just considering how it impacts the surrounding towns.

Janice: This issue came up in a previous case this year. We want to take it off the table before we go forward.

Motion PASSES: Unanimously 5-0 we believe there is **no regional impact**.

Janice: My question to the board is, given the time constraints, we can continue to the next month, or potentially have another meeting this month?

Howard: I think the applicant deserves a decision. I would say we should push forward and vote tonight.

Sam: I am happy with that. I think we should have another meeting this month.

Janice: I want to do it right, too. The applicant deserves that too.

MOTION

Howard: **Motion** to continue board deliberations to **May 29, at 7pm**.

Janice: **Second**.

Unanimous Approval, 5-0.

Point of order from audience— I would like to know that members of the public will not be submitting any additional materials?

Janice: Correct

4. APPEAL of Denied Variance for NeoKraft– Case: ZBA 2018-01

Beverley: I have a question. It is about the Planning Board, Ben Inman made a decision that the sign is internally lit.

Howard: We need to decide if we are going to rehear it or not.

Janice: We need to decide if we want to rehear it.

Sam: Real quick, from the notes...I thought they went around it. But by the end they decided it was internally lit.

Beverley: But, so is everything else.

Howard: So, do we grant them a variance from the ordinance.

Sam: So, we have to first decide if we will rehear.

Beverley: I think there is a reason to rehear this.

Barbara: At this point, are we allowed to change the wording of the decision? I find fault with the way #5 was written in the decision. #5 "Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship. The board found that the current manually changed pricing is legible and that Irving would not lose business due to the lack of a LED price changing component." I think we came to the right decision, but can we change the wording? I thought there was a provision within the 30 days to allow the decision to be changed.

Sam: I think that is small.

Janice: If he brought it up, then we can open it up to rehear it to change a motion.

Sam: As far as I can tell, this application for a rehearing does not show. It is a photocopy of the original application.

Barbara: If they don't show any evidence, or any evidence to make us change our opinion, then there would not be a reason to rehear.

Janice: We heard at the OSI conference "a second application must be materially different in nature and degree from the original application."

Sam: I don't think we should.

Beverley: The amendment does not even make sense. So the whole sign is digital except for the LED.

Howard: They have a new sign which is less legible than it ever was.

Janice: The reason we went to the Planning Board, is that they wrote these ordinances, and the town voted on them.

Sam: So that is why we went around like that. You have an internally lit sign without a variance as it stands, but it does make sense to upgrade your lighting for energy efficiency. So they already have an internally lit sign, but we gave them permission.

I don't see anything in the application for a rehearing. Also, the confusion is the internally lit part. And having clarification from the Planning Board.

MOTION:

SAM Motion to deny the rehearing application of NeoKraft decision of 2018-01 due to lack of new evidence.

Barbara Marty: Second

Beverley: No

Howard: No

Janice: Yes

Sam: Yes

Barbara Yes

Motion Passes, 3 - 2, with Beverley and Howard dissenting.

5. UNFINISHED BUSINESS

VOTE FOR VICE CHAIR.

Janice: Asked Barb if she would be interested in serving as Vice Chair. She was unable to attend April's meeting and we held off the vote to ask Barb if she would serve.

Barb stated that while currently serving in a full-time position, she will not have the time to dedicate to the Vice-chair position.

Howard: I agreed to continue as vice-chair for this year but may want to resign during his term, depending on how things go.

Janice: I make a script before each meeting so if I'm unable to attend, I would still send the script.

Howard: Is it OK to resign the vice-chair in the middle of a term, if something comes up.

Janice: Yes.

MOTION

Beverley: Motion to continue with Howard as Vice Chair.

Second by Janice

All in favor.

Unanimous Approval, 5 - 0

Howard will continue as Vice Chair.

6. COMMUNICATIONS AND MISCELLANEOUS

Janice: - I wanted to discuss quickly with Andy Bodnarik who is working to make changes to the zoning ordinance definitions.

Andy: I went through the ordinance and marked up everything. Pull all the terms up, and pull up the undefined terms in the use table. Where there was an existing definition, I cut/pasted it and put in alphabetical order. A few years back, I had a 2.5 page list of terms that were undefined. In the mark-up it will say, term means...and I did that for all the terms that were not identified in the ordinance. I apologize that I missed the term Site.

Janice: I wanted to ask you something and thought it was best to ask in a public hearing, in terms of legality. My concern is that under definitions (Reference Zoning Ordinances, page 2) Accessory Apartment is defined. Accessory Building is defined. Accessory Use is defined. Why would you need to define Accessory Professional Office? I don't know if you want to get into that kind of granular level of definitions. Accessory building is defined in the use table, then refer to the use table for the granular definition. That seems adequate.

Andy: I tend to think the opposite. What I saw in the use table was "including but not limited to"

Janice: Sometimes we want the definition to be open.

Andy: That is your decision. What I am suggesting is what leads to a whole bunch of other questions. The other thing that I thought about is that we should be able to find the definitions in the front, unless the rule is so extensive. There are some rules that are so extensive where you go into the book levels of the statute, where the definition is there and you just put it in the front of the section.

Janice: Accessory Professional Office, just as an example, so we don't go off in too many directions in this discussion. The definitions refers to an Accessory Apartment, an Accessory Building and the generic term Accessory Use. It does not seem necessary to add a definition for Accessory Professional Office. Because then you will find that you have to define everything in the Use Table section under the category Accessory. Such as; define day care, garden, accessory professional offices and what kind of offices, dental, broker, lawyer, and what kind of accessory building, a garage, etc. It could be never ending.

Andy: Your choice is as far as I can see, if you said that Accessory Building includes all those things, and put in one definition, instead of two. I have not gotten that far, yet. My suggestion is to go through the terms list that I gave you, some might not need a definition, and some might. Then say, this goes better under accessory building. All I am saying that I pulled the terms from the back and moved them to the front with whatever language went with them in the use table. I think definitions belong up front. It makes the Use Table much less debatable. Then you don't have a problem. Instead of having all that extra language buried at the back of the ordinance, you have it at the front where people can see it.

Let me give you one more example. The comment tonight was travel trailer, it is in the ordinance. You have to work on how you want it structured.

Janice: Instead of giving this entire document to every zoning member, if you could whittle it down and fine-tune it. Then give us a copy that would be more useful. What are your thoughts as a board?

Harry: I think it is a great idea. I don't know if it needs to be as lengthy. I think whittling it down is good, there is nothing more frustrating to come upon a word, in the middle of the ordinance, and you don't know what it means. The only way to find out what it means is to read the whole ordinance. I don't know if it has to be as detailed.

Janice: I would like you to work with a Zoning Board member.

Andy: Is he volunteering?

Janice: Not necessarily. Barbara are you going to work on this with Andy? Did I hear that you were working with him?

Barbara: It has been brought up before that we are going to work on it. It was not specifically definitions, but, I'd be happy to work on it.

MOTION:

Janice: Motion to task Barbara to work with Andy on Ordinance definitions.

Howard: second:

Unanimous Approval 5 – 0.

Janice: Barbara will work with Andy. We will have a joint meeting with the Planning Board in September.

Harry: Why wait until September?

Janice: When I went to the Planning Board, that is the time period they recommended.

Harry: When I was on a Planning Board, we did the re-writes at the end of the year. Then it gets jammed into the end of the year.

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Janice: I will talk to Ben and find out when would be a good time. I will clarify.

Harry: This is not something that the ZBA does. The Planning Board does this.

Janice: When I talked to Ben, he said he would welcome any input.

Andy: I am going to the Planning Board, too. The Planning Board feels that if you have a problem, tell us so we can fix it. They are looking for your input, and then they will work on it. Every year the law changes. Every year they change in order to keep up with current law.

Motion to Adjourn, made by Howard and seconded by Sam, at 10:14 pm. **Unanimous Approval 5 - 0**