

**Town of Warner
Zoning Board of Adjustment**

Approved Meeting Minutes

Wednesday, May 29, 2018

7:00 PM Warner Town Hall



1. OPEN MEETING and ROLL CALL

Sam Bower	Beverley Howe	Howard Kirchner
Elizabeth Labbe	Janice Loz	Barb Marty

Seidel- absent

2. APPROVAL OF MINUTES – May 9, 2018

Motion to approve minutes as amended: Sam

Second: Howard Kirchner

Approved: 7-0

Statement to public made before meeting: Please refrain from making comments. Board needs time to consider all the variables. If everyone could speak up in order to be heard, and one at a time, we are taping for documentation, this makes it easier to catch everything to decipher what is on the tape. Nobody is to approach the board for any reason, unless given permission by the chair.

3. VARIANCE APPLICATION – Continued from March 14, April 11, April 19, May 9, 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.

Continued Board Deliberation portion of public hearing.

BOARD DELIBERATES

Barbara: I would like to start with a motion.

Janice: We have to get the five criteria answered. We need that to write a decision.

Sam: We could discuss the 5 criteria as a group, then get a motion.

Janice: First criteria, granting the motion will not be contrary to the public interest because:

Sam: I have a concern about that because of the physical closeness of the units. I think the ordinance was written to protect the people who live in these parks. Although they are living in a small space, they still have a little bit of room. Even though they have 15,000 square feet, it is not much.

Barbara: It also gives them a defined space. In a clustered space, it is close proximity. Also, people like to have outside space and outside living space. People living in small units like to have outside space for additional storage and outside living. Taking away that outside space will take away the little bit of privacy.

Sam: I do feel, to some degree, the applicant has spoken to that, and addressed that. With the clustered design, they are thinking about the border with the neighbors and that would be increased. It is not as if the applicant has not thought of that.

Janice: The town of Warner specifically supported ordinance Article XIII, which says there should be 15000 sf per unit. Do you feel that is something that they agreed to, as it is written in our ordinance?

Sam: I brought this up as a public safety interest in there as well. Some of those units are only 30 feet apart from each other; I'm not an expert, but fire, wind, or if a septic goes down, there are four units on one septic.

Beverley: I agree with Sam.

Howard: I do not agree that it is contrary to public interest. I saw in the record of the planning board, Ben Frost said that he favored the clustered concept, and that the planning board was leaning toward that somewhat, pending approval from the ZBA. The applicant's big argument in all of these seems to be minimizing environmental impact; I'm not entirely on board in every case, but I do see that this would minimize the environmental impact with the clustered situation.

Elizabeth: The only question I have is, in the minutes, I read that there was an abutter concern about the actual length. I am wondering if we had a tape measurer used? Or does that not matter?

Howard: It is an approval thing with the planning board.

Sam: Their engineer said that she would be sure it is put in the proper spot. It was a little hard to do that because the exact locations were not shown to us. They were generalized locations. Those closest to the boundary line, if they were moved 10 feet one way or the other, that might actually make the difference for the 50 foot buffer. It was hard at the site walk to say that here is the boundary behind to the closest corner of the unit. It would have been nice to do that, and make sure, but we will have to trust the engineer on that.

Janice: We did not get an answer from anyone on the setback. But we did get something from Jennifer McCourt that said it met all the setbacks. But we did not see anything significant to the contrary.

Sam: It would almost be impossible to do until the pad is laid out, and you could say here is the spot, then you could drag a tape from closest corner to closest corner. Until that happens, we just have to trust.

Janice: By granting the variance, the spirit of the ordinance is observed. It says explain why granting the variance is not in conflict with the permitted uses of the land and the goals of the Zoning Ordinance. The thing that stood out for me was keeping within the 15,000 sf lot per unit, in an R3 district. The rest of the district is limited to one unit per three acres. It does, in my mind, change the character of that district to cluster the homes. I found that to be something that was difficult for me to rectify. I did not feel that it fit.

Howard: But the 15,000 sf is allowable under the ordinance. So you cannot compare that to the 3 acres.

Janice: But, that is what they want the variance to. They don't want 15,000 sf per unit. I felt that 15,000 sf was acceptable in that district.

Howard: You cannot compare that to the rest of the neighborhood has 3 acre lots because this is a manufactured housing park.

Janice: I see what you are saying. Yes, it is not 1 unit for 3 acres but being that it is manufactured housing, it is 15,000 sf for one unit, and that makes allowances for manufactured housing or for work force housing. That seems acceptable. You are already making an accommodation, why make another accommodation?

Sam: I think that goes along with what I was saying. The three acres per house lot in that district, and then the 15,000 sf site size for manufactured housing in that district, it is to give people their space, or their room, to some degree in the same idea.

Barbara: It is the personal space, feeling like it is somebody's site, instead of feeling like you are sharing a site with 2 or 3 different homes, sharing a driveway and sharing all those things. I think it will make people feel like it is less of their home, and more like a campground.

Howard: But nobody is saying you have to live there. That is a choice. They choose that lot.

Sam: I agree with that. The application was written that way to attract millennials to Warner. From my own personal stand point, I think they want a little room to breathe. If that is one of the main attractions, I'm not sure that lines up. That might not be the case for everyone.

Janice: Keep in mind that it is a variance. It goes against what is allowed. Is there good enough reason, is the question we have to ask ourselves.

Howard: We are in uncharted territory.

Janice: By granting the variance substantial justice is done. Explain why the impact for you does not outweigh any negative impact to the general public or to other individuals.

Barb: So the inverse. If you don't grant the variance, then it would be an injustice. I don't think there has been any evidence presented that there is an injustice.

Janice: Right. Because he could go ahead and do the yield plan, and he stated he would do that if he didn't get the cluster. We are not saying he cannot put a manufactured park on that property.

Barb: The conservation commission could not find that one plan had less of a negative environmental impact than another. It is hard to say that it is justice or an injustice based on the environmental impact.

Janice: In my mind, if we granted the cluster design, it would be an injustice to the district. You could fight that both ways.

Howard: It is a tough one.

Janice: Do you think that by denying the cluster, you are doing an injustice?

Howard: No. We are helping out the developer by granting the cluster concept. We are helping out the environment by having less spread-out structures. It is either way. It is a hard sell.

Janice: Granting the variance will not diminish the value of surrounding properties. Barb, do you have any thoughts on that?

Barbara: Are we talking inside the park, or outside the park? I think it diminishes the attractiveness by someone wanting to move into the park. I think people would find it more attractive if they had more space, if they had more personal space within the park.

Beverley: The question is property values in the area.

Barbara: Can we consider that?

Janice: Did you see any evidence that it would or would not diminish the values of surrounding properties?

Sam: For surrounding properties in the area, between the two designs, I don't know if you would see a recognizable increase or diminishment of property values, one way or the other. If the variance is denied, and it

goes in anyway, then it will do what it does to the property values. If the variance is granted, and the park goes in, then I think the results would be about the same.

Howard: I agree. It is fairly hidden, with the 100 foot setback on a class 6 road. (**Note: Schoodacs is not a class 6 road.) There are only going to be 1 or 2 structures visible from the road either way. The rest is going to be to the neighbors, if they like seeing the neighbor that close. But with surrounding property values, I don't think it will diminish the value of the sand pit across the street.

Sam: I agree.

Janice: I did not see any evidence that it would improve property values.

Barb: That is the thing. They did not provide evidence either way.

Sam: I think that Joe's points were correct. I see Joe's point by putting properties that will be taxed by the town, that alone will physically raise what the property is paying in taxes to the town. I personally think that adding those units there, that piece of property will increase the value. I cannot say what will happen to properties on either side. I think it is a nice spot to put a park. I agree that you'll only be able to see one or two units from the road. The neighbor will probably be able to see a unit or two.

Janice: I think it is the cluster value that changes the inherent value of the district. But a manufactured home park? We don't get to say.

Barbara: One of the abutters said, if you put in three single family homes in there, you will end up yielding more in taxes, and will be more attractive to the abutter. But we are not allowed to consider that.

Beverley: We are not allowed to talk about taxes?

Janice: No. We are very boring. We look at the ordinance and what is allowed in the ordinance. We don't get to have feelings. I see your point, Beverley. Elizabeth?

Elizabeth: I'm Ok.

Janice: Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. I think that if this ordinance was literally enforced, as a manufactured housing park, with a yield plan, he is within his rights to do it. He said he would pursue it. If we don't grant the variance, I don't think there will be a hardship.

Howard: There is a financial hardship, but that is not under our scope to consider. It is going to cost more. He will have to put in 13 wells. Whereas with the clustered plan is less of a financial hardship. They can get 1 septic for three structures with the cluster plan. One septic and one well for each site is a financial hardship. So I think it is more of a hardship to do this without the variance, but that is not within our scope.

Janice: You would have to argue if it was a financial hardship. That was not brought to our attention. Did the applicant argue the financial hardship of one plan over another?

Sam: Mostly just the property, and just the easement, and the slopes are hard to deal with, and the wetlands. But, although some things can be hard, I think there is a difference between hard and unnecessarily hard. I think that the park could be built, and everyone would fit in there.

Janice: Do you think that it would be important to clarify what kind of structure goes in here? Just to clarify it for the public?

Beverley: Yes.

Sam: Yes. Do we have to do that if the application is passed, should that be a condition that the wording is changed to manufactured housing unit. If it is passed, then the language needs to be in it. If it does not pass, then the ordinance stays the same.

Barb: If we vote either way, with the present wording, it is as if we are sanctioning this wording. My motion was going to be to reject the application, as worded. I don't think we have the authority to approve or deny something that is not defined by the state of NH.

Sam: It is true that in the application, it is defined correctly, although the wording is confusing. This would be a question for Janice. At this point can we reject the application because we already approved it? Then the question is would we want to do that, because then maybe the application would be reworded and resubmitted.

Janice: I think that if we define what goes on this property, then if the variance is granted or denied, and he goes ahead with the yield plan, then it will be stated clearly, what goes in that yield plan. I hear where you are coming from Barbara, and I agreed with you at the last meeting, but I have changed my mind a little bit.

Barbara: I look at how California defines a tiny house.

Janice: I think we will get into trouble if we define what a Tiny House is and it would be better to define what a manufactured house is.

Barbara: I think that just using the term, when the state of NH and town of Warner have not defined what a tiny house is, then we are opening up this application to future confusion about what is allowed on the property. At some point, the state of NH will define tiny houses. If we have accepted or rejected, or continued on with a yield plan this using that terminology, even if in our own heads define now, then at some point in the future, this will become muddled. I think we are doing an injustice. I think we are overstepping our authority by allowing the applicant to define something that the state of NH and the town of Warner have not. I don't think it is our job on the ZBA to come up with a definition. I think it is up to the PB to come with the definitions.

Howard: There is going to be an issue with this on the planning board. It was pretty much agreed that they were talking about a maximum 10 x 40 structure. Actual manufactured house has to be 320 sf.

Beverley: A tiny house can be tiny. It could be 200 sf.

Janice: I think if we made a motion to define what kind of structure, I know it is redundant, but in order to clarify for the public and for the board. I think it will do what you want it to do, Barb. I think we will both get to the same end.

Barbara: No matter which way it goes. If we approve or deny, with the current wording. we are putting some weight to that term that we don't have the authority to create.

Sam: I think that we have. In the meeting minutes obviously, have gone through this enough, to look at what we've talked about. It is obviously that we are only talking about a manufactured housing park. I guess it is confusing. I feel like we have gone over this and we know that the town of Warner needs to come up with an ordinance for a tiny house unit. I think that should be good enough. I don't know how we do it.

Janice: I will make a motion. Anyone can make a motion.

Sam: Something like a tiny house in the town of Warner will be known as a manufactured housing unit until further defined?

Janice: No.

MOTION

Janice: The only structure that is allowable in a manufactured housing park is 8 foot or more in width by 40 foot more in length, or when erected on site is 320 sq feet or more, certified by HUD, and subject to inspection by

the Warner building code officer, and manufactured in an approved manufacturing plant, or as defined by Warner Zoning Ordinances.

Beverley: When you do that...

Janice: Let's get the motion done and then we will discuss. I did not mean to cut you off but want to be sure we follow procedure.

Sam: And that is verbatim?

Janice: The first part is, except that I added HUD and the building code officer.

Sam: And both of those other parts that you added are found elsewhere in the ordinance?

Janice: Yes.

Sam: I would almost be in favor of if we are going to go ahead down this road of making a motion, of saying that that only units allowed in a manufactured housing park will be those as defined in the warner regulations for manufactured housing parks. That is very redundant.

Janice: It is in there. Under Article XIII and XIV, plus it is in the letter that we all got.

Elizabeth: Are we redefining Article XIII C1?

Janice: No, just pulling it out.

Sam asks for a re-reading by Janice, and adding "or as defined by warner zoning ordinance."

Sam: Seconded the motion.

DISCUSSION

Howard: The zoning ordinance says, which in the traveling mode is 8 feet in width. When it is on the site, it is no longer traveling.

Beverley; Or course it is, it is on wheels.

Howard: I don't know if you can restrict it to only 8 feet in width because someone might come in with a 10 foot wide one

Janice; I am not restricting it to 8 feet. I said 8 feet or more.

Howard: Oh you said 8 feet or more? I stand corrected. Does this overrule the possibility of the owner building structures for the tenant on the site?

Beverley: Of course it does. We are saying it has to be built in a plant, under HUD. We are not saying someone could build this in their back yard.

Janice: I suppose it is a moot point because if he is going to build to HUD standard, then it has to be both. We could get rid of the manufactured plant part. It is a crucial part.

Howard: It seems that it would have to be subject to Warner building codes.

Sam; That came up earlier. I asked the applicant if he would build the units and the answer was yes. Even though it says that they have to be built in a manufacturing housing plant, if a building inspector comes and puts a stamp on it. I think there is a way to do both. You can buy one in the store, or you can have someone build one.

Janice: It might be redundant, but it isn't wrong.

Barbara: That is why we should not be defining terms. We should not be in this position. The applicant should ask for what is allowed. If we are in a mosh pit, where we are coming up with definitions, we have to look back at the application and ask why are we here?

Janice: Did you read the letter?

Barbara: I read the letter and I disagree with some of it. I just think that half the time we've spent on this application is because the application is written incorrectly. We should just insist that the application be written correctly, then there is no ambiguity.

Sam: I totally agree with that, unless the application is denied. I would not want to ask the applicant to rewrite the application.

Howard: And go through three meetings of the zoning board before he can even get to the Planning Board.

Sam: Personally, if you were to be at any of the meetings, and read the minutes, we know the difference. There are these standards for manufactured housing units. We know the difference. It is not a tiny house, it is a manufactured housing unit.

Janice: I want to build on your point, so it gives a clear consensus of what the board understands to be a manufactured house. That is the purpose of the motion.

Sam: So it is written somewhere. We understand a manufactured housing unit to be as it is written in the zoning ordinance. I don't think we are going to get into any serious trouble. It shows where the board stands.

Barbara: I think there is potential.

Elizabeth: It seems a little redundant, because we have it defined here.

Janice: It also send a clear message to the public of what we are voting on.

Sam: I think if you have not been at the meetings, and have been listening on the fringes, then you might think that Warner is not tiny house friendly.

Janice: Let's clarify what we are talking about.

Elizabeth: HUD has clear standards. We can find it pretty easily online.

Howard: It is clearly stated in the application.

Janice: Don't even get into all the words on the application.

Howard: They even say it, a tiny house and a manufactured home are interchangeable.

Janice: We are saying what a structure is, in a manufactured housing park.

Howard: Yes

Sam: Yes

Barb: No

Beverley: yes.

Janice: Yes.

MOTION PASSES, 4 - 1.

Elizabeth: Does that go into the ordinance?

Janice: It goes in the meeting minutes, and we can put it into the motion.

Janice: Any other motions?

Howard: Is there any middle ground between approval or dismissal of the variance.

Janice: I think that now that we are clear to go on and decide the clustered development on a manufactured housing park. That motion got us to the next thing, if we are going to approve or deny the variance.

Howard: What about conditions?

Sam: I thought about that, putting conditions in, so in the application but the dimensions were not set. We could do an approval with 2 units, minimum sf of 7000 or something like that. But as I was thinking through that, I was wondering how, but it is not what they asked for. Even with the conditions, how it would meet the steps for a variance. Why would be more in the public's interest to be a two cluster? It would definitely be in the applicants interest, again for financials but I don't know if that is our place. So looking at the middle ground, and I still could not fit it in with the five pieces of a variance.

Howard: My middle ground proposal would be 1 site with a max of 4 units, for the variance. 1 site of say 25,000 sf, up to four units, to be sited anywhere on the lot. That is between the applicant and the Planning Board.

Janice: At that point, he could submit another application.

MOTION

Janice: I make a motion to Deny the variance for Joseph Mendola construction of a 13 unit tiny house open space development under the manufactured housing park regulations. The subject property is located on Schoodac Road, Map 11, Lot 14-1, in the R3 district.

Granting the variance will be contrary to the public interest. Article XIII manufactured housing ordinance requires a 15,000 sf lot.

By denying the variance the spirit of the ordinance is observed. A manufactured housing site size requires 15,000 sf lot per unit. Clustering the homes creates crowded areas that is not in keeping with an R3 district which is rural in nature and usually has a buildable area of 1 unit per 3 acres. This would not be in harmony with the general purpose and intent of the zoning ordinance.

The applicant has not presented substantial evidence that by granting the variance surrounding house values will be neither negatively nor positively affected.

The applicant communicated his desire to develop the cluster plan in order to alleviate the wetlands. Although, the applicant stated that if they do not garner approval for the cluster plan, he will proceed with developing the proposed yield plan. Therefore, the board finds that literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship or deterrent for the applicant.

Barbara asked to have the values of the surrounding properties read again and asked that the wording be changed to "the applicant has not presented..."

Second: Beverley

Sam asked to have it read one more time.

The above motion is read one more time.

Janice: That is the good thing about seconding a motion. At least if you do discuss it then you can vote it up or down, or you can amend it.

Jason: What document are you reading from?

Janice: This is just one I wrote.

Jason: When did you write the document?

Barbara: Is he allowed to comment?

Janice: No he is not. Is this a point of order?

Jason: This is a 91A request. I will put it in writing so there won't be any question.

Janice: That is fine. A motion to deny the variance...Do you want the one where I approved it, because I prepared for both.

Jason: I will be asking for all documents relating to this matter.

Janice reads the motion again.

Sam asks that "and usually has a buildable area of 1 unit per 3 acres."

Janice agrees and the motion is read as follows:

Motion to Deny the variance for Joseph Mendola construction of a 13 unit tiny house open space development under the manufactured housing park regulations. The subject property is located on Schoodac Road, Map 11, Lot 14-1, in the R3 district.

Granting the variance will be contrary to the public interest. Article 13 manufactured housing ordinance requires a 15000 sf lot.

By denying the variance the spirit of the ordinance is observed. A manufactured housing site size requires 15000 sf lot per unit. Clustering the homes creates crowded areas that is not in keeping with an R3 district which is rural in nature. This would not be in harmony with the general purpose and intent of the zoning ordinance.

The applicant has not presented substantial evidence that by granting the variance surrounding house values will be either negatively or positively affected.

The applicant communicated his desire to develop the cluster plan in order to alleviate the wetlands. Although, the applicant stated that if they do not garner approval for the cluster plan, he will proceed with developing the proposed yield plan. Therefore, the board finds that literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship or deterrent for the applicant.

Barbara does not know if you have to say R3.

Janice: I think it is the rural nature of that district, and that is why people come to Warner.

Sam: I think it is good, and we got all five points in there. In that case, I am ready to vote.

Howard: So you took out the 3 acre minimum lot size in the district, because it is permissible by the zoning ordinance.

Janice: Well, 15,000 sf is permissible.

Janice: A yes vote will approve the motion.

Approve /Deny/Continue – Application (Roll call vote)

Beverley: yes

Barbara: I want to abstain, but I will vote, yes, but we should deny this application.

Sam: yes

Howard: no

Janice: Yes

MOTION PASSES, 4 - 1.

The application has been denied.

Any aggrieved party has the right to appeal a decision made by the Zoning Board of Adjustment. The appeal must be made within 30 days of the decision. The appeal will be granted if you can show that the decision was indeed made in error.

Janice: I would like to ask the board if they would like the letter from the conservation commission be sent to the planning board. All agreed.

Howard; It was a follow up, and a consequence of the site walk which I don't think the Planning Board would do again. I think there will be plenty of people at the PB meeting to express their concerns.

COMMUNICATIONS:

Elizabeth: What is the protocol for calling sick? Just send to Diane?

Janice: You are better off sending things to just Diane, and not to the entire board.

ADJOURN:

Sam: Motion to Adjourn

Beverley: Second

Unanimous approval.

Meeting Adjourned at 8:24pm

*ZBA meetings will end at 10:00 P.M. Items remaining on the agenda will be heard first at the next scheduled monthly meeting.