

APPROVED MEETING MINUTES

TOWN OF WARNER PLANNING BOARD & ZONING BOARD

September 17, 2018

7:00 PM

WARNER TOWN HALL - LOWER MEETING ROOM

5 East Main Street, Warner, NH 03278

- **OPEN MEETING**
- **ROLL CALL**

Zoning Board members:

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

Planning Board Members:

- Ben Frost , (Chair) Don Hall (Vice Chair) James Gaffney
Ben Inman Clyde Carson (Representative of Board of Selectmen)

Peter Anderson is absent.

Combined meetings are chaired by the Planning Board chair.

- **NEW BUSINESS**

DISCUSSION OF POSSIBLE ZONING AMENDMENTS

Ben Frost referred to the agenda of three items.

1. Zoning Ordinance Document, edited by Andy Bodnarik.
2. Manufactured housing/tiny homes clarification/definition (requested by Barbara Marty)
3. Treatment of agricultural uses in the zoning ordinance (Ben Frost)

Ben Frost recognizes Andy Bodnarik's work on this. Andy has tried to consolidate the definitions that appear in different sections, and put in one definition section, and then add definitions that are not defined.

This brings to bear a question of philosophy of how to deal with terms. Should they all be in one place?

1) Do we have a definitions section or 2) have definitions that only apply to one section of the ordinance. Then you would keep those definitions in that sections.

Two different schools of thought on how to organize definitions. It is a matter of preference.

Andy Bodnarik – One issue that has come up is if you looked at the use table, terms in the use table, that were not defined in the ordinance. So there was a question of do we need those definitions, and would they be helpful? In a previous version, I moved all the defined terms to article III. This forced a renumbering of the document. The ones in RED are the recommended changes. The ones in black are the original definition moved to article III. Then in blue, are ones I was not sure what to do. Where there is a definition from an RSA (in red), the reference is noted. On the first page, the first thing that came up was abutter. There are two definitions of abutters. The definitions were if there was a road in between, and how the use was planned. This had to do with people who live on the water.

Beverley Howe – You did not include the original definition.

Andy – If a definition was missing, I put one in. A better example is if you look at the definition of **building** on page 4. There is a definition in the ordinance document, and one in the RSA (with more detail). Then do you want the definition in the RSA, or do you want the one in the original zoning ordinance?

Janice Loz – but we don't have a definition for abutter right now, in the zoning ordinance.

Ben Frost – I want to point out that we have other abutter definitions in our documents, which are different from the RSA.

Janice asked how we want to deal with the definitions, if we have an issue with a definition.

Ben Frost – I think if we can consolidate our thoughts by each board, that is where we start.

Sam Bower – Already we have decided with the first definition, there are three definitions.

The boards discussed the definition of abutter being in several places, with different definitions depending on how it is being used, in the subdivision document, in site plan regulations, or as a mobile home resident, or a condominium.

Andy Bodnarik pointed out that there are different terms of the word person, there are multiple places that a person is defined differently.

Ben Frost asked to check to see if there was a definition in RSA 21. That would be, in the absence of a definition, that is definition to which we would turn. The one in the state building. RSA 21 is called statutory construction that applies to all the RSA's with the absence of a definition in a particular statute.

Harry Seidel and **James Gaffney** pointed out that if you make the definitions too long then people will not read them, and they will no longer be useful and it would restrict development. Ordinances are to prevent the worst of the abuses, not to micromanage.

Clyde Carson questioned if we take on the language of an RSA, and then then the legislature changes it, is the town allowed to take a broader definition than what they put out?

Ben Frost – With regards to whether we can have a more restricted version of expansion definition depends on what the purpose of the definition is. The word Abutter, because it deals with constitutional rights, we cannot have a definition that is less than the RSA. Or we can say that abutter is as it is defined in RSA, and then refer to the RSA.

Sam Bower stated that we have already said that it is nice to have a loose broad definition, so that the town, and a board, and the community have wiggle room. Is it possible to have a brief definition, and then refer to an RSA so that we can find it easily with all the detail? Then you have a glossary option at the back of the book.

Sam asked why Andy chose some terms and not others.

Andy responded that there are terms that you can find it, and others you cannot find anywhere, and he pulled from the dictionary for ones he could not find in an RSA or our zoning ordinance document.

Janice voiced concern with items in the use table that are pulled out and defined, and don't give you any more information. Janice thinks it could be helpful to pull out the terms that we found useful. She has issue when we take out whole sections, **temporary signs** for example, and you took it out of the ordinance, and put it up front in the ordinance. She is concerned because it is nice to have it in the ordinance. She asked if we hold someone to a definition (legally) the same way that we hold someone to in the ordinance? Can we hold an applicant to a definition, the same way we can in the general provisions?

Ben Frost responded that the definition holds throughout the document. Do you want it in the section where people will be looking for it, or do you want it under definitions?

Harry and James think it should be in reference to the statutes.

Ben Frost pointed out that we have no discretion over abutter.

Howard noted that we had an issue with the zoning board that was a renter that was given the status of abutter, in the matter of the gun range.

Ben Frost thinks the judge got it wrong in that renters, by this statutory definition, don't have statute of abutter. They may have standing, but that is different.

Clyde Carson agrees with the opinion that we should use the RSA. If we had a definition, then a link to the RSA, we could say the governing RSA is this, and the town has chosen to look at the scope, but we do this over and above, or restrictively.

Ben Frost thinks this could work and likes the idea of linking from a pdf.

James Gaffney pointed out that if we include hyperlink to specific RSA, then we are forever updating the links. If we simply put in a link to the General Court website, that is probably sufficient. The general court site will always be valid.

Ben Frost pointed out that the statutes on-line are broken down into title, section but not paragraph. But you can get to RSA 674:2, but you cannot get to RSA 674: 2.1.

James reiterated if we are going to point to an RSA specifically, then broaden or narrow, we will have to reference the date of the RSA. If we do something that is more or less restrictive than what is updated, we will get into a problem. Every time that we deviate from an RSA, and we are more or less restrictive, then we need to point to the RSA

Ben Frost – We have agreed, in principle, to using statutory references by adopting them by reference. And then we will figure out how to do that.

Harry had a question if a municipality can get in trouble if their ordinance is less or more restrictive than the state.

Ben Frost responded that it depends on what it is. If it is an abutter, it is dealing with a constitutional principle. There is precedent for this in Milford, but it has to be on a case by case basis.

Clyde responded that we could not be more restrictive than the RSA on accessory dwelling unit. But we can make our setbacks further from water.

On Page 3:

The boards agreed to: Page 3 – **Remove Accessory professional office.**

Remove Agriculture and farming.

Ben Frost has been working on the agriculture and farming section for several months. James Gaffney feels that the section of the Use Table that includes agriculture and farming is a good candidate for a work-over because it is not consistent with the statute.

Sam suggested that a reference to the RSA would be able to answer any question people have. Thus, a reference to the statute is comprehensive.

The boards agreed that for Farm and agriculture definitions – see agriculture. See section 21:34, and site the paragraphs. Agriculture is in paragraph 2, and agriculture and farm is in the use table.

Automotive Repair –

Beverley wondered what is wrong with the way it is and also noted that we have two garages in town that do not do automotive repair and have no mechanics, at exit 9.

Andy – There are places that do not repair but do provide oil and gas. Automobile repair is listed in the table but there is not a definition. It is under retail, number 14.

Ben Frost noted that our two garages in town are not legal because they are in the intervale district, where it is not a permitted use. This was mentioned last year, but we were unable to move it forward for a variety of reasons.

Sam Bower asked if there is an accepted and unified dictionary.

Elizabeth Labbe was told to use a Webster’s dictionary if she had a question.

Ben Frost responded that there is not a single accepted source. There are many Webster dictionaries. There is a planning definition of terms. It is a state of the field of planning across the country. American Planning Association recommends A Planners Dictionary.

Harry Seidel said that we need to have a definition. If this is not the right definition, then let the planning board come up with one. Automotive Repair has a lot of room for environmental damage.

Sam – In the name of being relatively broad and open, to have some wiggle room, this definition has some wiggle room. It is a definition that seems logical and he does not see what harm it would do to accept the vague definition.

We need something in the automotive Repair section.

Bakery is in the wholesale manufacturing section of the use table. Janice noted that it may need to go elsewhere in the use table.

We do not need a definition but it needs to be

Discussion about Foothills being a bakery, Schoolhouse café being a baker, and Dunkin Donuts not being a bakery.

Sam – Bakeries are often wholesaling, and then moving to a retail place. It does not mean you are solely wholesale. How can a business, like a bakery, fall into two different use tables? They are retailing and wholesaling. If you are allowed to wholesale large amounts of foods, then it seems you would also be able to retail.

James – when you look at the use table, there is a path for a business that fits the description to fit into Warner’s use table.

Clyde – a small organization is different than Wonderbread putting in a factory.

Andy – “including, but not limited to” is a problem. There is no way you are going to name every type of thing.

Ben Frost – “But Not limited to” Ben researched this term and found a lot of information. Generally speaking, the term is intended to provide flexibility. It will also give the ZBA headaches.

James –There may be changes to the use table that may drive the definition that we need to include. I explicitly used retail services because I cannot think of a retail service that would be highly undesirable to the point where Warner would want to call it out in the use table. At some point, we need to have a discussion about retail services in the use table and whether this can be simplified.

Janice – if everyone feels that bakery is covered by eating and drinking places, then we don’t need to define it.

Ben Frost suggested, and everyone agreed, that we pull out things that we want to discuss at the October meeting.

Howard asked about **building** on page 4. Is it necessary to go there? If we refer to the RSA, we are done.

Ben Frost explained the issue with the IRC 2009 definition - you have to pay to subscribe so using that definition is a problem. would like to think about this one more. There is more to it than what is here. We will work to include some of the dwelling section.

Commercial Parking Lot or structure section – boards agreed to remove this from page 4.

Dwelling , Dwelling, Multi Family, eating and drinking places – the entire section will be worked on at a later date.

Ben Frost noted that **drive through and drive-in** are not the same thing. Drive-in is people on roller-skates, and drive through is what we have now.

Family -put in parking lot to discuss later.

Hospital is under community facilities on our use table. We will come back to this.

Height – **Harry** will bring this up at the **next meeting**. Questions about the lowest and the highest grade of a building. You could average those, and then someone else will have a different definition of the lowest and highest. Beverly

Howard – has question about **LOT** definition. This is not a new definition, an existing definition. There are three definitions.

At this point in the meeting, we are picking and choosing what we want to discuss at the next meeting.

Lot – Keep existing definition of lot, and consider if we need a **buildable lot** definition.

Ben Frost noted that there is no 677:24, it is 674:24. This definition of LOT is removed for the next version.

Under **Local Legislative body** – remove all the I, II, III, , etc. OR Let's see where the term occurs and how frequently it is used.

Page 8 – did not touch this page.

Page 9 – why do we single out non-profit vs. for-profit organizations? This is something we need to address and Ben Frost does not feel we have a legal basis to differentiate.

Remove parking structure.

For **PERSON** – Look to see if there is something in **RSA 21**.

Structure Is this appropriate relative building code? Also ask this for **building**.

Page 12 – **Tiny Houses** – a minimum area of less than 80. This is Andover's adopted definition.

Sam Bower would be nervous to make a definition of a tiny house. A manufactured housing unit would fall under this.

James – the whole premise behind the tiny house, is that it can be moved. Our current ordinance refers to HUD specs. Why would we not hold Tiny homes to the same standards as manufactured housing? There is an EASY button – hold tiny homes to the same standard as manufactured homes. HUD has this notion, I hate referring to Federal statutes in our local statutes. They have to be legally capable of being transported over a road. It has to conform with HUD definitions.

Sam said that it might be difficult to define things when the terms are not in our language already, and Tiny House is not anywhere in our terms.

2. Manufactured housing – tiny houses.

Barbara Marty would like to add Manufactured housing to the use table, but was not asking for clarification of tiny houses.

Ben Frost - It would be helpful to have some treatment in our ordinance. We need to distinguish between tiny homes on wheels, vs. ones that are fixed on a foundation. The email that was circulated from HUD to Janice, is consistent with what the planning board in making a recommendation for the ZBA. Tiny houses have to meet HUD standards, or state standards for installation or they are recreational trailers and not for year-round occupancy. Until such time when state law changes, then we cannot treat tiny homes as a separate category. We need statutory guidance. It is difficult to say that they are allowed as permanent residence.

Beverley – cannot we not ban tiny homes in our town?

Ben Frost – I don't think we need to ban them. It is difficult to say that they are allowed as permanent residences. You need to get a building permit, connect to water supply, if the inspector says that a tiny house meets the building code, then it meets the building code.

James Gaffney asked if it has to conform with manufactured homes in our ordinance? It has to comply with one or the other.

Janice does not see how they are held accountable to any code.

Harry – manufactured houses - there are very strict HUD guidelines, closely monitored. The problem with a tiny house is that it is not closely monitored.

James – tiny home should conform with existing statutes. Either way it has to comply with our existing statute. We do not have an accommodation for deviation from that except for variance or special exception.

Janice – travel homes and trailers are regulated. Can we regulate a tiny house?

James feels it's a chicken and the egg. There is an industry that has come up with a tiny home. We don't have to deal with it because we have statutes that deal with this.

Beverley - why won't we just have to say that it has to meet the specs of a regular house?

Sam – Although we don't have to, can it be something that we choose to deal with differently? Are there ever exception to building codes? If we built a tiny house ordinance, then it would meet these specification. What about the people who would want to live in warner, in a tiny house?

Ben Frost said that a tiny home is simply a small home. He asked If anyone is aware of a limitation of building size in town ordinances? Is there something that says a home has to be a minimum of x. The residential 2009 code, has a minimum room size of 120 sf, not including (each dwelling has to have at least one room that is 120 sf, not counting closets and bathroom.) The 2015 international code reduced that to 90sf for a home. In its commentary, they talked about people wanting to live a minimalist life style. There is precedent. Joe Mendola built a 650 sf house, allowed under our building code, and inspected by our town inspector.

Don Hall feels that it comes under travel trailer because it is on wheels.

Howard – With Mr. Mendola, he was looking for a variance on minimum lot size for a manufactured housing lot size. Is there a situation where you would have a minimum lot size allowable in a manufactured housing situation for approved tiny houses on wheels.

James suggested that this is a variance, which has a very high bar.

Howard suggested altering that lot size in manufactured housing parks, to allow smaller houses. Is it worth altering that lot size, making it smaller for manufactured housing park? Something for the millennials to have. A small thing on a larger lot.

Janice Loz – Another point I want to make is that, building on a travel trailer. Tiny homes are often on their property and having family staying there, so they are not purchasing a lot to put the tiny house on. They are treated like travel trailers. In a travel trailer, they can only stay for so long.

James Gaffney said that the town has also had yurts come up. Either it conforms to the building code or it doesn't. It is allowable for temporary uses, but not year-round occupancy. It would still need to conform to building code. Why wouldn't we come up with a smaller lot size for tiny homes. There is a reason why we have the subdivision that we have, it is in part amongst other things to establish a maximum density. That is there in part to protect abutters and the nature of the neighborhood. If we are going to discuss an exception for tiny homes, it means we have to define tiny homes. And does the town have an appetite for changing the fundamental nature of a neighborhood?

Ben Frost responded that this is an important question. Ben has been thinking about this in terms of building in the building center where the fire station would have gone. A conceptual site plan, for a cottage style development. It was not allowed because of the density. It is on water and sewer, so maximizes efficient use of infrastructure. If we call it tiny homes or cottages, we could have an overlay that allows smaller home development in and around the village.

Janice Loz– we might consider tiny homes in camp grounds, just like you would a tent. Then you don't get into regulating.

James explained that he knows someone who is living in a town that allowed tiny homes, and they are now Airbnb with people coming up on a temporary business. The consequence of the town allowing tiny homes is that they now are for people to stay on a temporary basis.

Ben Frost – the legislature is working on this. When and how municipalities are /should be empowered to legislate air bnb, et. al., Laconia and Portsmouth are dealing with this.

Andy Bodnarik – approved Andover's definition to be distributed at next meeting. If you look at the current definition of structure in the RSA, it talks to anything erected or constructed, it could be argued under state law right now that a YURT or a Tiny house can be considered a structure. Buildable is in your current regulations on page 10.

3. Agriculture – On the use table,

Agricultural in the 2018 zoning ordinance. Ben Frost struggling with references to commercial vs non-commercial. What is the difference between commercial and non-commercial forestry? A way is to look at a logging operation and is it subject to a timber tax? If it is, then it is commercial, and if it not subject to a timber tax, then it is not commercial. Those that are not subject to tax are things that a property owner is doing for their own consumption. The limitation is 10 million board feet from a lot.

Sam Bower noted that 10 million would be a very big lot. Forestry - you can be engaged in many different types of forestry, which includes forestry, wildlife, and management. You are just using forestry techniques to further wildlife habitat, which would be non-commercial. When lumber tax kicks in, that makes perfect sense.

James – everything seems to boil down to personal and commercial. I don't think the state statute allows for that sort of distinction. That puts us into a quandary.

Ben Frost – if that is how we want to define it, then that is how we want to define it.

James – is there a problem we need to solve?

Ben Frost – just understanding the different between the two. if someone complains about a logging operation, the BOS can say, "the volume of timber being removed is not sufficient to invoke the timber tax, so it is a non-commercial operation, not subject to enforcement.

Sam – I think it would help land owners if they are looking to do work with their chainsaw on their own property. Once you get enough lumber down, and move it, then you should have had a cutting permit anyway.

Ben Frost – will look at this and report back to the group at the next meeting.

Agricultural on use table– why do we have a distinction between temporary green house and a year-round house?

Don Hall – No foundation. Temporary structure.

James – most green houses fall into that same bucket.

Ben Frost – It is presumed they will be removed after 6 months. How many pole barns are removed after 6 months? Do we want to be more permissive of year-round green houses? We aren't very welcoming to temporary green houses.

James – why do we care as long as it meets setbacks?

Barbara – maybe they are thinking of a commercial operation, with parking and traffic.

James – Then that is retail.

Clyde – we have had someone who tested the code to the limit - Every structure you could imagine.

Andy 's father had a green house for over 20 years. It was permanent, and had a foundation. It started out smaller than our house, then became larger than our house. I am concerned with the use of chemicals. I would be more concerned about chemicals than anything else. If it is a permanent greenhouse, there will be chemicals used to protect th plants.

Sam – A quick point, lots of what you see Green House, is technical a high tunnel or a cold frame. Technically, a green house has mechanized components. Most of what you see in Warner are high tunnels and cold frames. But a green house would be mechanized in some fashion, and a commercial green house, most, if not all have a very large foundation, and footings.

James – if it is temporary, why do we care?

Ben Frost – In the use table, under agriculture, there are a series of places that are blank. We infer that it means variance required. The problem is that the way the statute treat the absence of is not to be construed as a prohibition. Arguably this can be used against the town. It is confusing to everyone.

Barbara – if blank, then people think that if they reach this threshold, for a variance, then they think they can get it. People think if they see a V, then they think they can get it. Variance can and should be difficult to get.

Janice responded that if you can get a variance, then why hide it?

Ben Frost – we can take this up again, to have a V in the blank spaces.

James Gaffney– you could put a NP.

Variance is described by RSA.

Ben Frost – If you see criteria referenced to a specific use would be helpful, please let us know.

Ben Frost reminded the boards that last year, John Dabuliewicz suggested that by putting a V, you were encouraging people to apply for something that should be very difficult to get.

Variance and Special Exception are described in the RSA, and on our application.

Howard Kirchner has an issue about the sign ordinance, illuminated signs. We came through that, and the issue of lighted numbers.

Don Hall responded that it starts with enforcement.

Howard – you have illuminated signs, then there are service stations that wants to have their numbers lit up. There was a variance for illuminated sign, the lighted numerals, then it was not permitted. It is like Mr. Mike’s in Contoocook. I am looking to make a business friendly atmosphere and that is getting very picky. I would propose a loosening up of the illuminated signs in the business and commercial districted. Allowing internal illuminated, such as for Fuel Price change signs.

Howard -we put up signs for town hall meetings that are not allowable. We put them up when we have a fire station meeting, a town meeting, nobody says much about that.

Ben Frost – within the sign ordinance, there is something called government speak. They don’t have to come under the same regulations. If we are borrowing a notice for town meeting, that is government speech. There should be some distinction.

Planning Board and Zoning Board September 17, 2018 APPROVED

Ben Frost will take a stab at drafting something to address the lighting.

- **COMMUNICATIONS AND MISCELLANEOUS**
- **PUBLIC COMMENT**
- **ADJOURN**

Meeting adjourned at 9:35pm.