



TOWN OF WARNER

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**Zoning Board of Adjustment
Minutes of September 8, 2021
Town Hall in the Lower Meeting Room**

1. The Chair opened the ZBA meeting on September 8, 2021 at 7:05 pm.

A. ROLL CALL

Present: Barbara Marty (Chair), Howard Kirchner (Vice-Chair), Beverley Howe, Harry Seidel, Elizabeth Labbe (Alternate), Lucinda McQueen (Alternate)

Also: Janice Loz, Land Use Administrator

B. The Chair elevated Elizabeth into the voting member status

C. Chair's Opening Statements

The Chair said because we are no longer using a video format for our recordings we need to indicate who is speaking for the transcriber. Either a member can state their name, or she will call on members.

The Chair said they need to stop including Janice in discussions when we have applications before us. As much as she is an excellent resource for us, she is no longer a board member. When the board is in a hearing, we have to be careful, if we need Janice to answer a question it should be about a specific land use item. Howard stated that it could be something addressed to her through the Chair. The Chair agreed. She cautioned that Janice could be confused as a board member. Janice asked if she could speak during the public portion of a hearing? The Chair said just make it clear that you are speaking as a Warner citizen and not a representative of the Town or the board. Beverley said would that apply if, as a town employee, she was giving information that is pertinent to what we are discussing? The Chair said anything that we ask her to contribute is fine. Beverley said she is in a special category, not like an ordinary person, so we would have to identify that. The Chair said it is confusing for people especially if they knew her as a board member and we casually ask her for information. He felt it was good to give some precautions going ahead and to keep that in mind. Howard felt that he has not seen anything improper with Janice here and helping us and guiding us. Beverley agreed.

Janice said the board could always ask procedural questions. Have the fees been collected, have you been able to find the deed, etc. The Chair said that was correct but, we can't ask for advice, recommendations, or any information the board itself should be

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handling. Janice said that if the board goes off course legally, she has a tendency to want to jump in, she will not be doing that. The Chair said she can make a point of order.

The Chair said the last point she wanted to make, was they may be in a hybrid meeting situation in October. There will be a camera and we will have people who are not physically present yet are participating in the meeting. Howard said the Planning Board and BOS meet downstairs, so potentially it will be in this room. The Chair said she may start bringing her laptop in for meetings. She said laptops should not be a distraction, it should be in support of the discussion before the board. We need our full attention on the matters before us. The same thing applies to phones. Harry asked if the meeting she was talking about was going to be on the 13th of October? The Chair said we may have the hybrid meeting mode by then. Beverley clarified the board will be meeting physically in the meeting room.

2. Approval of Minutes: July 14 and August 11, 2021 minutes

A. Review of the July 14th meeting minutes. The Chair reviewed the audio tape and there was a question on Page 2, paragraph 2, a quote attributed to Howard. That one paragraph was synthesized from eleven minutes of conversation. Howard said there was a lot said that isn't reflected here. A point Howard made that didn't get into the minutes was it is in the ZBA's realm to make recommendations, but the Select Board does the approval. The sentence in question that was attributed to Howard read, "*Howard felt that if the Zoning Board handpicked the members, they could choose people to help sway the board in a certain direction*" was actually made by Janice. The Chair said the audio then indicated *Howard had agreed with that assumption.*

Howard asked if that portion could be removed from the minutes, because he didn't make that statement. The Chair said we could state that Janice made that statement or remove it. Howard offered to change the wording to say, *the board discussed . . .* but, he did not want his name associated with the quote. Harry asked who made the comment? Howard said, Janice. Harry suggested why not just say Janice made the comment. The board agreed that would be appropriate.

Harry made a motion to accept the minutes of July 14th as amended. Howard seconded the motion. Discussion: None. The Chair called for a voice vote. **Vote tally: 5 – 0.** The minutes of July 14, 2021 were approved.

B. Review of the August 11th minutes. Harry had a change to Page 2, paragraph 6. He felt part of his response on that page was inaccurate. The sentence reads: "*Harry said if the board wants to go along with this it is okay.*" Harry said that he never thought it was okay. But, he would go along with the board's wishes. He felt it would be more accurate to say, "*Harry said if the board wants to go along with this, I'm okay with it.*" He said he is okay going with the board but, he is not okay with saying it is okay. He felt strongly it was not okay. Beverley asked for clarification as to what the difference was between the two statements. Harry said, he wants to clarify I'm okay, but "it" is not okay.

Harry referenced Page 3, paragraph 2 of the minutes. Harry told the board he was going to read his point of view and asked members to compare it with the second paragraph. When Sam stated if the applicant was comfortable providing answers to number 5 for hardship then he, Sam, was comfortable with it. He said Sam was following Janice's suggestion to accept the application as complete. The assumption being that the applicant would some how make it complete with a verbal answer for hardship. Beverley said that is not okay. Harry said what else is plausible. The ZBA has never entertained an incomplete application. So it must be that we were to assume they would answer verbally

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for hardship. Therefore, he felt a more accurate wording of the motion should include accepting the application as complete. The motion says, Sam said if they are comfortable he would make a motion to accept the application. Harry said he felt the motion should say “accepts the application as complete.” Harry said we don’t accept an application unless it is complete. Howard said just change those two words and it doesn’t take anything away from what Sam says. The Chair said, but that is a quote of exactly what Sam said. Beverley said the application was not complete. Janice said you can accept an application as incomplete. Howard said we cannot reword what someone said. Beverley said if you read further on, Sam goes back to saying that he agrees with what Harry said. Harry said he believes strongly we should not accept applications that are incomplete. Harry said it is a minor point because they voted on it.

Howard suggested putting a notation in parenthesis “(as complete)” next to the motion. Beverley said, but he didn’t say that. The Chair said when it is a motion, it should be the exact words. Howard said it wasn’t a motion, as much as, Sam saying he would be comfortable making a motion. Janice noted in the minutes that Howard had seconded the motion.

Harry said the minutes do say that Sam said the motion is “if they are comfortable then he would make a motion to accept the application.” Janice noted that on Page 4 the Chair restates the motion, clarifying what the board was voting on. Beverly thought that seemed to clear it up.

The Chair went onto Page 4 of the minutes. The second sentence at the top of the page should read “...then ~~they~~ the Planning Board...” Harry had a correction on Page 5, paragraph 6. “The Chair clarified they are asking the applicant to resubmit ~~the~~ a completed application.” Also, at the bottom of Page 5 “As far as the ROW it is a driveway that goes ~~into that~~ to a separate driveway that goes ~~into~~ to that tower.”

Beverley said on Page 7, paragraph 3 “Beverley said she would have gone out there to measure the lot.” She stated that she would never go out to measure a lot. The sentence was amended to read, “Beverley said ~~she~~ ~~they~~ ~~should~~ ~~would~~ have gone out there to measure the lot.” Further down on the same page Beverley added a question to the line “but, with no frontage_?”

Motion made by Beverley to accept the minutes as corrected. Seconded by Harry.
Discussion: None. **Vote tally: 5 – 0.** The minutes of August 11, 2021 were approved.

3. NEW BUSINESS

A. Review changes to five conditions section of Variance Application

Version 1 – Space provided for Applicant to answer 5 conditions.

Version 2 – No space provided.

The Chair directed the board to review the two versions of the Variance application. One version had no boxes for the applicant to fill in and the second had expanded boxes. Beverley said the version without boxes would prompt the applicant to attach multiple pages. She felt the expanded box version would keep the answers concise. Howard said he liked the expanded box version. Harry liked the version with no boxes and just a list, where the applicant has to add their own answers on attached pages. Although, he said the answers should reference the corresponding numbers. Elizabeth asked if it is clearly stated that if they need extra space attach paperwork? Howard said stated on the application is if you do not use the space provided, refer to attach pages. He said in the past applicants have noted in the box, the designation “see attached.” Beverley said if we

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go with the list and no space provided to write an answer, we will end up with more paperwork. Barb prefers the version with no boxes. She felt if we provide boxes they will write in them and it will not be typed.

Harry asked, on the form with the expanded boxes is this a smart box, where they can actually type in the answers? Janice said, yes. The goal is to make a fillable form where they can type in their responses. Harry said he has tried that on some other town's websites and he hasn't been able to do it. He usually has to write it in. Harry said if they exceed the size of the box the box gets bigger automatically? Janice said, yes.

The Chair said if this is a fillable form then it is a moot point, if the boxes can be filled in online and expand as needed. Janice said with the other version, there wouldn't be any boxes. The applicant could fill in other parts of the form, just not the conditions section. The Chair asked about a digital signature. Janice said for the time being they could print it out and sign it and submit it. Or, there could be an option for them to type their name and check a box granting consent to using their typed name as their signature. Then they would save it as a pdf and email it. I would have to speak with our web master about adding a button to submit the form via email.

Harry asked Janice if the entire form is digitally able? Janice said, yes. He thought that would be good. Howard asked if a written application could be submitted? Janice said, yes. Beverley was concerned that some people won't have the capability to use a digital only form. Janice said the majority of applications that come into the office are emailed. Lucinda said she liked having the boxes because it gives guidance. She felt it was a good idea that number five was emphasized in the expanded box version.

Harry made a motion to use the form that has the boxes. The Chair noted it is listed as Version 1 in the agenda. Harry amended his motion to accept Version 1. Howard seconded the motion to accept Version 1. Discussion: None. The Chair called the vote. Vote tally: 5 – 0. Version 1 of the Variance Application was accepted.

B. Informational template with reasons why a board would enter a nonpublic session.

The Chair discussed the nonpublic session document circulated to board members. She said this board is purposely meant to be transparent. Everything is out in the open and quasi-judicial. In the six years she has been on the board they have gone into nonpublic session one time. So, this is very rare. The Chair read the listed RSA's used to invoke a nonpublic session. She said if a session is necessary, we do need to keep minutes and those minutes are available within 72 hours. Those minutes can be extremely vague. As simple as the board received an update on litigation involving "x" and no decision was made. You don't have to give any details. Janice asked about meeting with the lawyer. The Chair said we don't have to call that a meeting and minutes don't have to be taken.

4. OLD BUSINESS

A. Rules of Procedure – Review and Complete

The Chair said she and Harry would like to work on some language tightening outside of this meeting and bring it back to the board. It will be brought back in a format where the people can look at it and vote on it without having a big discussion about every word.

Tonight, they will go through the document as amended and talk about it. It will not be called a finished document, just yet, until the next meeting. The first section is number II Regular Members and Alternates.

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Howard had an issue with number 2 "Each newly appointed or re-appointed member and alternate member shall be sworn in and take an oath of office as required by RSA 42:1. The oath of office will be administered by the Town Clerk." He said last month the oath of office was administered by a Selectmen to Lucinda McQueen. He felt "or by Town Selectmen" should be added. The Chair suggested taking that sentence out. Harry agreed. Janice said the reason that is there is to clarify the process. She is new to this position. In the process of trying to figure out who would swear in new members, she found out the Town Clerk did. Then after speaking with the Town Clerk she found out the Selectmen could also do it. Howard said any elected town official could do it. Harry asked what does it matter who does the swearing in? It doesn't really matter who does the swearing in. Howard thought you could add the Selectmen to that sentence so that everybody understands the procedure. Harry felt referencing RSA 42:1 was good enough, then just strike the last sentence.

Janice's concern was it doesn't help subsequent members and staff to understand the process. The Chair felt this was a decision to be made by the board. Last month it wasn't the Town Clerk, so she thinks it is perfectly fine to strike the last sentence. Beverley thought it should say both Town Clerk or Selectmen. Those are the only people in the building who can swear somebody in. But, she doesn't care she will go with whatever is decided. Janice said 42:1 does not state who administers the oath.

The Chair asked the board whether they wanted the sentence "...the oath of office will be administered by the Town Clerk or the Selectmen," to remain or to be removed. Elizabeth said if it stays in, it should say Town Clerk or Selectmen or possibly elected official. She thinks it is fine to remove the sentence as well. Harry said strike the sentence. Beverley agreed with Elizabeth. The Chair clarified the question to amend it or remove it. The Chair would like the sentence removed. Howard said remove the sentence. Lucinda said speaking from experience she felt it should read the oath of office will be administered by the Town Clerk or a Selectperson, because that is what happened. Howard changed his vote to agree with Lucinda's statement. The Chair stated the board majority wanted the sentence to read "...the oath of office will be administered by the Town Clerk or the Town Selectperson."

Harry referenced number 8, and the sentence proposed to be removed "The Zoning Board shall submit the names of recommended candidates to the Selectmen for their concurrence and appointment." He asked how will the Selectmen find out about members. Will the board tell potential members to go to the Selectmen. The Chair said they fill out a volunteer application online. Howard said we can encourage people to volunteer. Selectmen can ask the board to review an applicant but, it is not a priority that an applicant first gets reviewed by the board. Harry said he has a problem with this. Does the Zoning Board have a chance to interview and find out if an applicant would be the kind of person that would attend meetings and be thoughtful and have the town in mind? Beverly said, no.

Harry has seen situations, not in this town, where the Selectmen have a specific agenda. He said let's say you have Selectmen that don't like rules and they don't like the Planning Board making rules. So, they fill the board with people that will let everyone do what they want with their property.

The Chair spoke about Howard's previous concern with this issue and how it relates to the ZBA, choosing candidates. Harry said he felt Howard's concern was that maybe the ZBA would be influencing who gets on the ZBA. Harry felt we should not step out of the picture all together. Because, we might have the Selectmen saying, we want this person

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on the ZBA because he has the views that we want. That person might not be what the common people in town might want. The Chair said we cannot suppose nefarious influences by the Selectboard. As a board we have made it part of our civic duty to recruit people that we think are thoughtful, intelligent, and care about the town. All the qualities that we want to see on this board. Beverley said she was directly approached by a ZBA member to be on the board. The Chair said that is the way we influence who comes to the board. But, we do not have the final say. She said they do not prescreen the candidates.

Harry said the Selectmen review and appoint. They make the decision. But this change to the regulations says the ZBA is not interested in recommending candidates. The Chair explained it was saying we shall submit, which we felt that was indicating we must submit candidates. Beverley said why don't we change shall to may. The Chair said we have talked about this at length. We don't get to screen candidates.

The Chair moved on to the Staff section of the document. "A Land Use Secretary/Clerk shall be hired by a majority vote of the Board of Selectmen..." The Chair asked Janice if that was true, wouldn't the Town Administrator hire. Janice said it is a vote by the Selectmen as part of the public record.

Harry asked what the red text in the document represents. Janice said, everything new since we have been working on this document.

Harry referenced section IV Meetings, number 4. "Nonpublic sessions shall be held only in accordance with RSA 91-A:3." Harry said he does not like the nonpublic sessions, they shouldn't happen or be incredibly rare. He asked why do we even talk about this? The Chair said because they do exist. We have to acknowledge that if there is a possibility and they are held in accordance with RSA 91-A:3. Usually these sessions happen at the beginning of a meeting or the end, depending on necessity. Janice said any member at any time can use the template sheet and call a nonpublic meeting for a stated reason. The membership then votes on whether to go into a session. Also, if for instance you wanted to discuss something about a staff member you would go into a nonpublic session. Harry said it wasn't there before, he would rather it say nonpublic sessions should be avoided.

The Chair asked Janice if the applicant pays any other fees other than the certified mail fee. Janice said there is an application fee and notification fees.

The board reviewed section XV. The Chair said Warner has traditionally done site visits as meetings. Beverley said it does not rule out going on your own and having a look. Harry said in Newbury they were encouraged and it was expected that members would make individual site visits. He said you could do it with two, but, you were not allowed to talk. Harry asked if they are allowed to do site visits alone in this town. Janice said they need permission from the property owner. Beverley said members can drive by the property. Harry asked if permission from the landowner means you can go on the property and knock on the door and ask permission. Janice said the applicant comes in for a public hearing. Then as part of the hearing the board determines if a site walk is necessary. Then you get permission from the property owner. The board coordinates a group site walk, it is considered a continuation of a public meeting. It is noticed and the public is welcome. It is recorded, minutes are taken, and strict rules are followed.

Harry's experience is very different. Is that something that is done in Warner because we have done it that way? He asked if we have investigated what other town's have done? He is curious how this has happened. It is not his experience of doing it that way.

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His experience is you do a site visit and you are allowed to if there is a Variance or a Special Exception application. They have to expect the Zoning Board is going to come and look at their property. It seems odd that to have the meeting first and we haven't even been able to look at the property. It seems like we are doing it with our eyes shut.

Howard said often times there are abutters who have issues with a request. If we have a public meeting the abutters can attend the site visit. Howard thought that is one of the main reasons why we have this is because abutters really are the most interested parties in these situations. Howard said the board hashed out the site visit portion about three years ago. Janice said it was difficult, at the time, to convince the board to include the individual site visit portion in the document. A lot of people did not want that in the document. It was scrutinized by legal before inclusion.

Howard said this is the way Warner does it and there is no law that says all towns have to do it the same way. Janice said on a personnel site visit they wanted to avoid individual board members going and talking with the applicant and to ward off any ex-parte communications. So, these visits happen and are documented in front of the public. Beverley said it would be nice if the Selectmen enforced the rules after we do a site walk and make decisions.

The Chair moved on to number 19 on the last page. "A majority of the voting members present decides a question unless a greater number is required. *No less than 3 concurring votes is necessary for a decision. Less than 3 votes results in a failed motion. If 4 voting members are present, in order to avoid a tie vote, applicants can request a continuance in order to have a full board of 5 voting members.* Two thirds of the voting members present are required to override a request to continue discussions or to override a decision of the Chair."

Howard said the wording of number 19 is awkward. Beverley suggested changing the first sentence to read "A majority of the voting members present decide a question." Harry asked why the sentence "If 4 voting members are present, in order to avoid a tie vote, applicants can request a continuance in order to have a full board of 5 voting members," was stricken-out from the document. Janice said this was researched and a decision made by a quorum of the board is a legal decision.

The Chair asked if we could offer a continuance? Howard said we have in the past. Harry said he understood but, if someone is going for a Variance and it is life changing event...if the town can't get five people...you need three so obviously you want as many as you can. If the town can't provide five members and you only have four, your chances are really reduced, it is not fair. So, it makes sense for someone to say I would rather come back when you have a full board. Janice said if the statement was staying in, she could easily put it back in. Howard said it is nice to offer the applicant the choice. Howard said we have asked applicants before if they are comfortable continuing with a quorum of four, or would they like to wait for a full board. The Chair asked that we hold off making a decision on this. She felt it was important enough to do a little research on this issue. Harry said that is fine, he thinks it's a nice jester to the town to offer a full board.

The Chair asked if someone would like to make a motion to accept the document with the changes that have already been read into the record. Beverley asked why we can't just decide this, now? The Chair said she felt it was important enough to know if it is legal to make that offer if we have a quorum and how that relates to everything being posted. Howard clarified the Chair is looking up whether it is okay that we offer them the opportunity to come back when we have a full board.

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The Chair said that she and Harry are going to go over the document and check for language and anything else. She asked if someone could make a motion to make these changes, then Janice can put them into the document. We will have a clean document which Harry and I can review.

Harry made a motion to accept the Rules of Procedure as discussed and the Land Use secretary will type them up for further review. Beverley seconded the motion. Discussion: None. **Vote Tally: 5 – 0.**

Motion to adjourn made by Harry. Seconded by Howard. The board voted to adjourn the meeting at 8:30 PM on Wednesday, September 8, 2021.

Submitted by:

Janice Loz