



TOWN OF WARNER

P.O. Box 59
 Warner, New Hampshire 03278-0059
 Land Use Office: (603)456-2298 ex. 7
 Fax: (603) 456-2297

Zoning Board of Adjustment

APPLICATION FOR VARIANCE

This application is subject to NH RSA 91-A which affords the public access to government records and meetings.

Application Fee		Notification Fee	
Residential	\$50.00	Abutter Notification ____ x	\$8.00
Commercial	\$100.00	Applicant Notification	\$60.00

* Fees for publication of the Legal Notice will be invoiced and must be paid prior to starting the hearing ** Please use attached form to list all abutters within 200 feet of the boundaries of the property.

Applicant/Contact Person Information			
Name of Applicant: <u>Pier D'Aprile</u>		Date: <u>8/25/2023</u>	
Applicant Mailing Address: <u>115 Bible Hill Rd</u>			
Town: <u>Warner</u>	State: <u>NH</u>	Zip: <u>03278</u>	
Telephone	Primary: <u>(508) 918-0980</u> Alternate:		
Owner of Property Information			
Name of Owner: <u>Pier D'Aprile</u>		Date: <u>8/25/2023</u>	
Owner Mailing Address: <u>115 Bible Hill Rd</u>			
Town: <u>Warner</u>	State: <u>NH</u>	Zip: <u>03278</u>	
Telephone	Primary: <u>(508) 918-0980</u> Alternate:		
Location and Description of Property			
Map #: <u>12</u>	Lot #: <u>5</u>	Zoning District: <u>R3 and OC1</u>	
Address: <u>115 Bible Hill Rd</u>			
Will a Site Plan Review approval be required by the Planning Board?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Proposed Use:			
<u>Minor Subdivision for two houses.</u>			
<small>Details of Request: Please feel free to include additional information on separate attached pages. Be sure to put the name of applicant and date on each sheet. (indicate number of sheets attached _____)</small>			

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

The undersigned hereby requests a VARIANCE to the terms of:

Article: VII / VII, Section: R3 and OCL of the Warner Zoning Ordinance

For a Variance to be granted, the following five conditions must be met:

(For more information reference the Warner Zoning Ordinance Article XVII and RSA 674:33.)

Please explain in writing how your project meets each of the five (5) conditions, in the space provided on the following pages. If you do not use the space provided refer to attached pages.

The applicant seeking a variance must be prepared to prove these conditions at the Public Hearing. In order for the public hearing to proceed there needs to be responses to all five conditions.

The five conditions are:

1. Granting the variance will not be contrary to the public interest because:
2. By granting the variance, the spirit of the ordinance is observed because:
3. By granting the variance substantial justice is done because:
4. Granting the variance will not diminish the values of surrounding properties because:
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - A. Meaning that owing to special conditions of the property that distinguish it from other properties in the area:
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property; and
 - ii. The proposed use is a reasonable one.
[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]
 - B. Or, if the criteria in 'A' are not established, then owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property.
[Explain what is unique about the property that makes the specific zoning restriction unreasonable]

1. Granting the variance will not be contrary to the public interest because:

See Attached

2. By granting the variance, the spirit of the ordinance is observed because:

See Attached

3. By granting the variance substantial justice is done because:

See Attached

4. Granting the variance will not diminish the values of surrounding properties because:

See Attached

Answer - 5.A.i. and 5.A.ii. - or 5.B.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

- A. Meaning that owing to special conditions of the property that distinguish it from other properties in the area:
- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property;

N/A

and

- ii. The proposed use is a reasonable one.

[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]

N/A

Or, if the criteria in 'A' are not established

- B. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property.

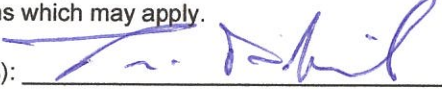
[Explain what is unique about the property that makes the specific zoning restriction unreasonable]

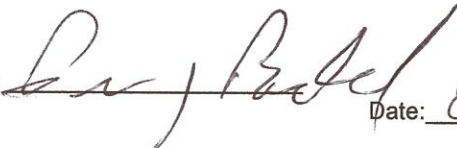
See Attached

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

Authorization from Owner(s):

1. I (We) hereby designate PIERRE J. BEDARD to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [Zoning Board].
2. By submitting this application I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the Zoning Board may at some point during the review process schedule a Site Visit, which will be duly posted.
3. I (We) understand that the Zoning Board will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.
4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s):  Date: 8/24/2023
 _____ Date: _____

Signature of Applicant(s), if different from Owner:  Date: 8/24/23
 _____ Date: _____

Printed name of person(s) who signed above:
PIERRE J. BEDARD
Pier D'Aprile

For Zoning Board of Adjustment Use Only		
Assigned Case #:		
Date Received at Land Use Office:		
Received by:		
Fees Submitted:		
Amount:	Cash:	Check #:
		Other:
Abutters' List Received:	Yes	No
Date of Review:	Date of Hearing:	Date Approved:

5 Conditions Explanations - Pier D'Aprile – 115 Bible Hill Road

1. Granting the variance will not be contrary to the public interest because:

The proposed subdivision of Map 12 Lot 5 into two lots will not be contrary to the public interest or injure the property rights of others because the proposed use and lot sizes are consistent with the neighborhood and surrounding area. The road frontage variance would allow the subdivision and construction of a new residence using the existing logging road for access. The existing logging road is commonly used by many residents, delivery vehicles, and emergency vehicles as a turn around. I would continue to allow this and build the finished driveway according to town regulations.

2. By granting the variance, the spirit of the ordinance is observed because:

The site plan proposes a new single family residence be created on 44.5 acres +/- within the R3 and OC-1 districts in the town of Warner. The use is permitted in both districts. It is understood that the road frontage requirement is intended to reduce over development and crowding of houses in rural areas. In this site plan, the new residence will be located more than 1,000 linear feet from Bible Hill Road and the existing residence. The plan will also preserve the values and charm of the area by keeping the existing historic house built in 1798.

3. By granting the variance substantial justice is done because:

The general public will not be negatively affected because the plan is consistent with the character of the surrounding area and the existing informal turnaround will be maintained as a resource for the neighborhood. This Application is an updated request of a January 10, 2018 Notice of Decision granting this Variance that was not implemented by the previous owners and has expired.

4. Granting the variance will not diminish the values of surrounding properties because:

The variance will allow the development of a single residence on a large lot that will unlikely be visible from Bible Hill Road and the surrounding houses in the area. The use is consistent with the surrounding area and poses no threat to property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: 5.B.

The unique characteristic of this property compared to those surrounding it is the shape. The long "L" shape lot consists of 48 acres +/- with only 330 linear feet of road frontage. The bulk of the land exists more than 2,000 linear feet from Bible Hill Road. Based on the zoning regulations for R3 and OC-1, the lot size is large enough to easily support the development of an additional single family residence but the road frontage prevents me from doing so. I would agree that a Major Subdivision for multiple homes on the bulk on the lot be an unacceptable proposal for a variance. I am proposing that a Minor Subdivision of only two houses on this lot is a reasonable request for a variance of road frontage while not altering the characteristics of the area and still honoring the spirit of the ordinance. Lastly, the existing historic house will be fully compliant with the R3 and OC-1 regulations as the proposed plan creates a 3.5 acre +/- lot with 250 feet of road frontage on Bible Hill Road.

Map by NH GRANIT

Legend

- Parcels
- State
- County
- City/Town

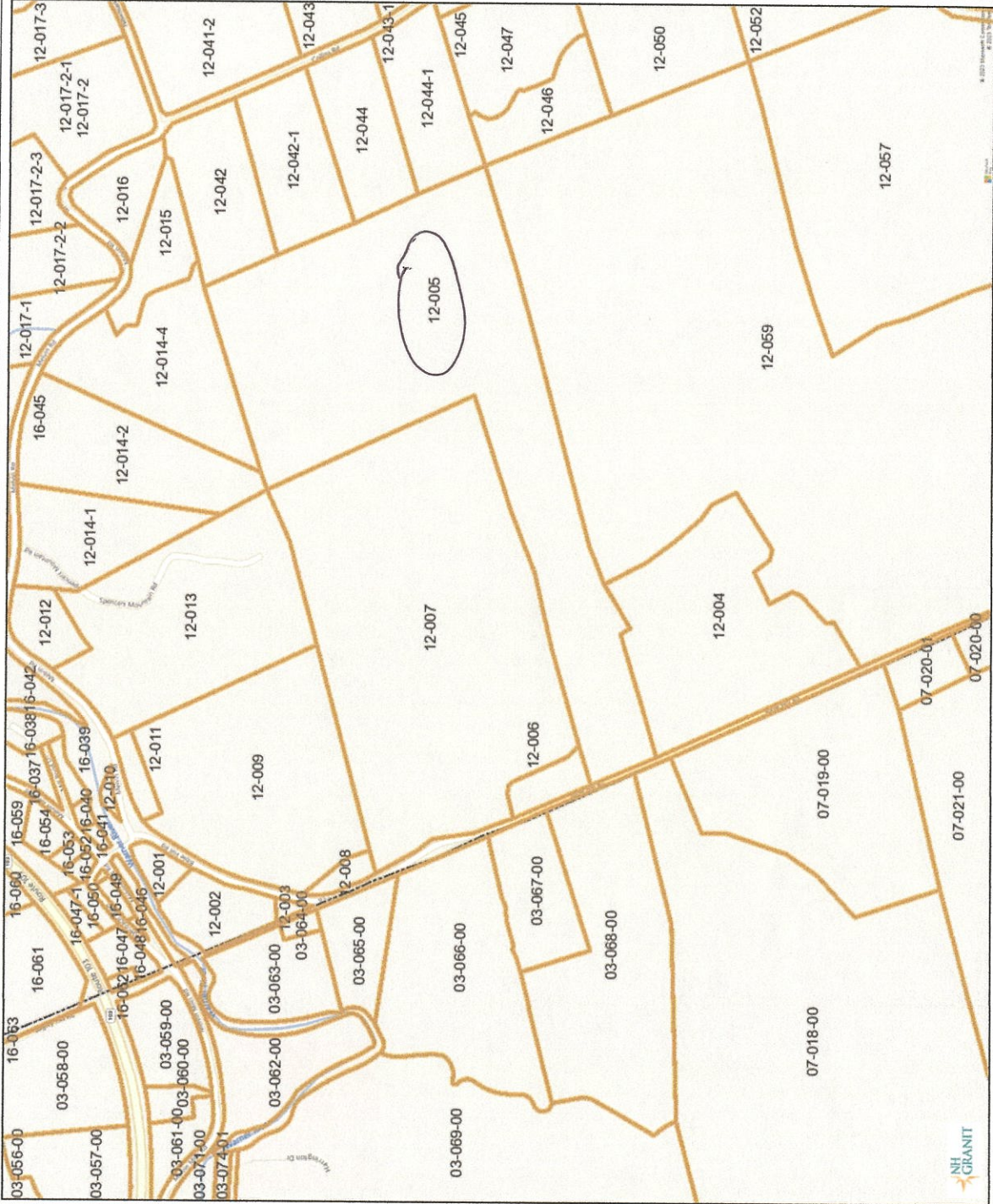
Map Scale

1:7,835

© NH GRANIT, www.granit.lnh.edu

Map Generated: 8/24/2023

Notes



Variance request is for 12-005

Please return to:

Benjamin T. Siracusa Hillman, Esq.
Shaheen & Gordon, P. A.
P. O. Box 2703
Concord, NH 03302-2703

WARRANTY DEED

1458
200
25

KNOW ALL PERSONS BY THESE PRESENTS THAT I, **Pier D. D'Aprile**, an unmarried person, of 115 Bible Hill Road, Warner, NH 03278, for consideration paid, grant to **Pier D. D'Aprile, Trustee, Pier D. D'Aprile 2021 Revocable Trust**, w/a/d dated October 25, 2021, having a mailing address of 115 Bible Hill Road, Warner, NH 03278, with WARRANTY COVENANTS, the following:

A certain track or parcel of land, with the buildings thereon, in the Town of Warner, County of Merrimack and State of New Hampshire, bounded and described as follows:

Situated on the easterly side of the highway leading from Melvin Mills to John H. Ewins, beginning at a stone bound on the highway at the southwest corner;

Thence easterly by land now or formerly of Ewins, to the southeast corner and land now or formerly of Levi Collins;

Thence northerly by said Collins land and land formerly owned by Cummings Marshall to the end of a stone wall at the northeast corner;

Thence westerly by said stone wall to corner of wall and land now or formerly of Henry L. Brown;

Thence southerly by stone wall and said Brown land to corner of wall and land of said Brown;

Thence westerly by said Brown land to the highway before mentioned;

Thence southerly by the highway to the bound first mentioned.

Said premises are also shown on a plan entitled "Stone Land (1369-969)" for Harold E. Stone, Jr., prepared by David R. Noyes, Surveyor and recorded at Merrimack County Registry of Deeds Plan #8477.

Containing about forty-seven (47) acres, more or less.

The premises are conveyed subject to Current Use Assessment recorded at said Registry at Book 1348, Page 368, and Grantee assumes responsibility for any current use penalty resulting from a subsequent change of use of the property.

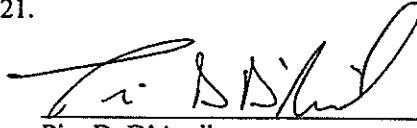
Meaning and intending to describe and convey the same premises conveyed to Pier D. D'Aprile by Warranty Deed of Pier D. D'Aprile and Stephanie E. D'Aprile dated September 21, 2021, and recorded in the Merrimack County Registry of Deeds at Book 3760, Page 1887. Reference is also made to the Deed dated July 1, 2020, and recorded in the Merrimack County Deeds, in Book 3684, Page 773.

The foregoing conveyance is a transfer into a revocable trust for estate planning purposes, the beneficial interests of which after the transfer are the same as those prior to the transfer, and therefore it is exempt from transfer tax under RSA 78-B:2, XXI, XXII.

THIS DEED WAS PREPARED FROM INFORMATION SUPPLIED BY THE WITHIN GRANTORS, AND NO INDEPENDENT TITLE EXAMINATION HAS BEEN PERFORMED.

All rights of Homestead pertaining to the premises are reserved to the Grantor personally.


EXECUTED this 25th day of October 2021.



Pier D. D'Aprile

STATE OF NEW HAMPSHIRE)
COUNTY OF MERRIMACK)

On this 25th day of October 2021, before me personally appeared the above-named **Pier D. D'Aprile**, known to me (or satisfactorily proven) to be the person whose name is affixed to the foregoing instrument and acknowledged that he/she executed the same for the purposes therein contained.



Notary Public





TOWN OF WARNER

P.O. Box 59

Warner, New Hampshire 03278-0059

Telephone: (603)456-2298 ex. 7

Zoning Board of Adjustment

NOTICE OF DECISION

Date of Decision: January 10, 2018

VARIANCE APPLICATION

Case: ZBA 2017-04

Applicant: Robert Nute and Heidi Holman

Property Owner: Robert Nute and Heidi Holman

Property Location: 115 Bible Hill Rd, Map 12, Lot 5

You are hereby notified that on January 10, 2018, the Warner Zoning Board of Adjustment voted to approve your request for Variance to the terms of Article VII/VIII, Section R3/OC-1 of the Zoning Ordinance; creation of one lot with 80 feet of road frontage.

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


Janice Loz, Chairperson

Date: 1/18/18

Warner Zoning Board of Adjustment



Town of Warner Zoning Board of Adjustment
P.O. Box 265
Warner, New Hampshire 03278-0265

APPLICATION FOR VARIANCE

Town of Warner Zoning Board of Adjustment
Telephone: (603) 456-2298, ext. 7

Please note that this application is subject to NH RSA 91-A which affords the public access to this information.

FEES: *

Application Fee: Residential: \$50.00 Abutter Notification: ** \$7.00 per abutter
Commercial: \$100.00 Applicant Notification: \$7.00 per notification

* Fees for publication of the Legal Notice will be invoiced and must be paid prior to starting the hearing
** Please use attached form to list all abutters within 200 feet of the boundaries of the property.

Name of Applicant: ROBERT NUTE & HEIDI HOLMAN Date: 10/23/17
Applicant Mailing Address: 115 BIBLE HILL RD
Town: WARNER State: NH Zip: 03278
Telephone: Primary (603) 313 - 5412 Alternate (603) 616 - 3324

Owner of Property: SAME AS ABOVE
Owner Mailing Address: _____
Town: _____ State: _____ Zip: _____
Telephone: Primary () _____ Alternate () _____

Location & Description of Property:
Map #: 12 Lot #: 5 Zoning District: R3-0C1
Address: 115 BIBLE HILL ROAD

Will a Site Plan Review approval be required by the Planning Board? Yes No (circle one)

Proposed Use: NEW HOME CONSTRUCTION

Details of Request: *Please feel free to include additional information on separate attached pages.
Put Name of Applicant and Date on each sheet. (Indicate number of sheets attached _____)*

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

APPLICATION FOR VARIANCE

Zoning Board of Adjustment

Town of Warner, NH

The undersigned hereby requests a VARIANCE to the terms of:

Article: VII/VIII, Section: R3 / 06-1 of the Warner Zoning Ordinance.

For a Variance to be granted, the following five conditions must be met:

Explain in writing how your project meets each of the following conditions (on separate paper if needed). The applicant seeking a variance must be prepared to prove these conditions at the Public Hearing. [Note: RSA 674:33 and Zoning Ordinance wording is followed by [a non-binding informal interpretation] to assist the applicant in understanding the five conditions which must be met]

1. **Granting the variance will not be contrary to the public interest because:** [Explain why granting the variance will not be unfavorable to the public interest:]
SEE ATTACHED

2. **By granting the variance, the spirit of the ordinance is observed because:** [Explain why granting the variance is not in conflict with the permitted uses of the land and the goals of the Zoning Ordinance- see Article I]
SEE ATTACHED

3. **By granting the variance substantial justice is done because:** [Explain why the benefit to you does not outweigh any negative impact to the general public or to other individuals.]
SEE ATTACHED

4. **Granting the variance will not diminish the values of surrounding properties because:** [Explain why the variance will not negatively affect property values in the area]
SEE ATTACHED

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**

A. Meaning that owing to special conditions of the property that distinguish it from other properties in the area:

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property; and
- ii. The proposed use is a reasonable one.

[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]

SEE ATTACHED

B. Or, if the criteria in 'A' are not established, then owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property.

[Explain what is unique about the property that makes the specific zoning restriction unreasonable]

Zoning Board of Adjustment

Town of Warner, NH

Authorization from Owner(s):

1. I (We) hereby designate _____ to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [Zoning Board].
2. By submitting this application I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the Zoning Board may at some point during the review process schedule a Site Visit, which will be duly posted.
3. I (We) understand that the Zoning Board will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.
4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s):

[Handwritten Signature]

Date: 10/23/17

[Handwritten Signature]

Date: 10/23/17

Signature of Applicant(s), if different from Owner:

_____ Date: _____

_____ Date: _____

Printed name of person(s) who signed above: _____

For Zoning Board of Adjustment Use Only

Date Received at Town Office: _____

Received by: _____

Fees Submitted: Amount: _____ Cash: _____ Check #: _____ Other: _____

Abutters' List Received: Yes: _____ No: _____

Date of Review: _____ Date of Hearing: _____ Date Approved: _____

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

ALL COSTS OF MAILING BY CERTIFIED MAIL, FEES, AND LEGAL ADVERTISEMENT IN A NEWSPAPER MUST BE PAID BY APPLICANT BEFORE THE HEARING MAY BEGIN.

1. **Granting the variance will not be contrary to the public interest because:** *The proposed subdivision of Map 12 Lot 5 into two lots will not be contrary to the public interest, or injure the property rights of others because the proposed use and lot sizes are consistent with the neighborhood and surrounding area. The road frontage variance would allow the subdivision and construction of a new residence using the existing logging road for access. The existing logging road is commonly used by many residents, delivery vehicles and emergency vehicles as a turn around. We would continue to allow this and build the finished driveway accordingly.*
2. **By granting the variance, the spirit of the ordinance is observed because:** *The site plan proposes a new single family residence be created on a 40 + ac lot within the R3/OC-1 districts of the town of Warner. This use is permitted in both districts. It is assumed that the frontage requirements are intended to reduce over-development and crowding of houses in rural areas. In this scenario the new residence will be sited more than 1000' L.F. from the existing residence. As you can see in the photographs attached (Figure 7) the distance and vegetation between the two residences create suitable separation. This plan also intends to preserve the values and charm of the area by keeping the existing historic home, and offering it at a price accessible by first time home buyers. The new residence will be in character with the surrounding homes, and take advantage of the pristine views to west, and the rustic feel of the Mink Hills.*
3. **By granting the variance substantial justice is done because:** *The general public will not be negatively affected because the plan is consistent with the character of the surrounding area, and the existing informal turnaround will be maintained as a resource for the neighborhood.*
4. **Granting the Variance will not diminish the values of surrounding properties because:** *The variance will allow the development of a single residence on a large lot, set far back from the road. This use is consistent with the surrounding area and poses no threat to property values.*
5. **Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:** *The unique characteristic of this property compared to those surrounding it is the shape. The long flag shaped lot consists of 48+/- ac with only 330' L.F. of road frontage. The bulk of the land exists more than 2000' from Bible Hill Road. The small historic home sits 30' from Bible Hill Road. Based on the zoning regulation for R3/OC-1 the lot size is large enough to easily support the development of an additional single family residence, but the road frontage prevents us from doing so. I would agree that a proposal for multiple homes to be built on the bulk area of the lot would not be an acceptable proposal. A variance allowing the construction of a new residence on a large tract with limited road frontage would not alter the characteristics of the area, and would still honor the spirit of the ordinance.*

Robert Nute & Heidi Holman



TOWN OF WARNER ZONING BOARD OF ADJUSTMENT

(603) 456-2298 Ext 8
FAX (603) 456-2297

PO BOX 26
WARNER NH 03278

Key: Inaudible means cannot hear the tape

APPROVED MEETING MINUTES

Wednesday, January 10, 2018

7:00 PM Warner Town Hall, Upper Meeting Room

1. **OPEN MEETING** and ROLL CALL

In attendance:

Elizabeth Labbe Barbara Marty
Janice Loz Sam Bower Howard Kirchner

Absent: Beverley Howe

Meeting called to order by Chair Janice Loz

Alternates sitting in Sam Bower and Elizabeth Labbe for resigned member (Rick Davies) and absent member (Beverley Howe).

2. **APPROVAL OF MINUTES** – December 13, 2017

Barbara Marty: Page 8 at the bottom. Last “you look at the ordinance”

Page 12 at top: 5 lines down. “I also talked to” (instead of town)

2nd paragraph: Apply the Warner Zoning Ordinance

Page 17. Mr Puffer: Second sentence: A proposed USE.

Three lines from bottom. Town name "WARNER" capitalize.

Page 25: 2nd paragraph, Andy Butinero's name is misspelled.

Page 29: under Janice, it says Comforting, and should be conforming.

JL Page 10. Starts with another. APTLY, instead of ably.

Page 23: third p from bottom, starts Kirchner. "if a person wants to shoot" instead of shot.

Page 26. Up from the bottom. Beverley will be a voting member.

Page 28. Barbara Marty. "Feel the..."put a space.

Page 30 in the middle Janice Loz, 'Frontage, I would find that to be acceptable.'

Howard K: Page 11. 2nd paragraph. "the applicant has not meet his burden "instead of met.

Attorney Mentelli: So 6 months from now....they may be gone."

Our last case: Page 37. Howard. It is an odd lot. I do recall saying that,"

DR: That is what is says on the tape.

hK: it doesn't really matter.

MINUTES APPROVED from December 13, 2017.

Janice Loz: Two cases before us tonight.

VARIANCE APPLICATION

Case: ZBA 2017-04 Variance

Applicant: Robert Nute and Heidi Holman

Property Owner: Robert Nute and Heidi Holman

Property Location: 115 Bible Hill Rd, Map 12, Lot 5

Description: Variance to the terms of Article VII/VIII, Section R3/OC-1 of the Zoning Ordinance; creation of two lots with less than the required road frontage for the district.

Janice Loz: We ask the public to refrain from making comments during board deliberations when we do go into board deliberations.

No one is to physically approach the table to thank or make any comments to the board for any reasons. Move away from the front table. You may stay until the end, or leave if you need to.

We had a vote to close the public hearing, and open the board meeting at the last meeting. Start the board deliberations. There is no public comment accepted during this time, under deliberations.

Applicant does not speak at any length, but applicant can speak to answer questions. Usually to clarify a number.

Anyone want to start us off?

We are just going to talk through what we heard, what our thoughts are. We are done with questions. We are making our way toward making a decision.

Sam Bower: As far...you are applying for 2 variances. You will need a variance for each property. Is that correct? I believe that is the case. There is going to be a variance for the residential that is right next to the road, and then a variance for the driveway that will go in on the OC1.

Janice Loz: But we only have one application before us. We have an application for a variance on the road frontage for two lots, to potentially make two lots. And then he would go to the planning board for everything else.

Sam Bower: One application could feasibly cover two variances. From the beginning, he has stated that he is applying for two variances. I don't know if that is written on the original application, or not. But I know that each parcel will require its own variance.

Janice Loz: Potentially.

Sam Bower : We've talked it over and the neighbors are OK with the proposal. OC1, as long as it does not become over-developed, it is zoned for light residential, there are no other houses up there, as far as I'm concerned, it looks good to me.

Barbara Marty: It is very clear that in our regulations it says that any lot created by a minor subdivision, which is what this would be, that the frontage in an OC1 buildable area requires 300 feet of frontage.

I just don't feel that even if we grant the subdivision non-conforming lots in the R3 district, that it really addresses the other requirements in the OC1 district.

Sam Bower: I think that's what the Variance is specifically is. If the Variance is granted, It is the purpose of the Variance, we are allowing it not to conform. There is a rule in place, but with the granting of a Variance, we are saying we can wave this rule for this case. Otherwise the variance would not be necessary.

Barbara Marty: Really the application is addressing the Variance for the splitting of the R3 frontage.

Janice Loz: Right. Because there is no frontage for that OC1 area.

Barbara Marty: And I think the reason that our zoning district was created with open spaces in that way was to keep that for agricultural and forestry uses. I know it is permitted, in an OC1 district, to have light residential use. But, for all of the three surrounding roads, every lot is in the same situation. Nobody has road frontage in the OC1 district. And that hill is meant to be kept as open space. It is my opinion, and the way I am reading the zoning ordinance, I think that was the spirit when the ordinance was written, but

Janice Loz: You can put residence in OC1.

Barbara Marty: With the correct frontage.

Sam Bower: Or a variance.

Janice Loz: So it is not like it was meant to have nothing on it at all.

Elizabeth Labbe: There is no OC1 road frontage.

Janice Loz: But he owns both the R3, and the OC1 property, so together he does have frontage on the R3.

Elizabeth Labbe: So would that just be the ordinance on the R3? Aren't we just discussing the splitting of the road frontage. Right?
Are we discussing permission to build a home or breaking the frontage in half?

Janice Loz: Yes. Both.

Elizabeth Labbe: ;If he was not asking for permission to build his house. If that's not a question, or for our zoning board to discuss then...

Janice Loz: He is asking for permission to develop that land.

Sam Bower: I think he is asking for permission to have a non-conforming driveway. He could go build a house up there is totally within his right. Light residence is allowed under OC1. He could knock the house down, and put something on the hill, and nobody could say anything about it. It's kind of a question of a little-minnie subdivision. He wants to make it two lots so he can have two houses, and two driveways. The only way that would be able to work is , technically, we could make him push the driveway all the way over so that one lot does conform all the way That is an option, but due to convenience, he is asking that we do them both. And apparently none of the neighbors have a problem. One neighbor does have a problem? On the record?

Janice Loz: She came to a meeting, after that email, and she was OK with it.

Barbara Marty: they withdrew their objection?

Janice Loz: Yes.

Janice Loz: He could build a house on that lot right now. But he could not sell the antique cape without permission to pass over that land. He either has to knock down the antique cape. This would give us two houses on the tax books. Which is a benefit. He did go to the PB and came up with some possibilities. Sub-divide into two lots, one with a non-forming frontage of 250 feet, one with a non-conforming frontage of 80 feet. Or two lots with 330 feet of frontage, and a ROW being granted for an easement to reach to the second parcel. Or creating two lots with a common driveway. So he has proposed a couple of different options.

Elizabeth Labbe: Do we have those? I don't. I only have the letter where he would split it into 3.3 and 45.

Janice Loz: I found this today. Probably on the PB minutes.
It was addressed to the PB, signed by Mr. Nute. It's all what is most comfortable. I think a shared driveway is problematic at best. A ROW easement might be a good solution. Having one conforming lot and one non-conforming lot is reasonable. I don't think it looks crowded, or out of place for the district.

Howard Kirchner: It was going to be one conforming lot and one non-conforming lot. Where would we go with it? Would he need a new application?

Janice Loz: We would give him one variance.

Howard Kirchner: We can do that without him asking for that?

Janice Loz: I believe so.

Sam Bower: In the long run it ends up being the same thing anyway. It's just about how you go about it. It seems like. If the board it is a variance, technically applying for two variances. In the long run, it seems like, if we are happy, with one conforming and one non-conforming. If there were a shared driveway, the property could still be subdivided. If we would be OK with end result, it might be easiest to say, we just have a variance, and if we are happy with the end result.

Barbara Marty: Did Beverley submit a letter? I know she was in the favor of one conforming and one non-conforming lot. Did...

Janice Loz: Does anyone have how he wants the lots to be divided.

Sam Bower: It was on the original map that he submitted. There was an original on the map that he submitted. What the road frontage would be. I don't have it in front of me.

Barbara Marty: But the original request was not specific.

Janice Loz: But he wanted to take the original driveway and make it..check the tape...which would leave two non-conforming lots.

Mr Nute produced a map.

Elizabeth Labbe: So if he wants to keep the driveway the same that it is, and wants to use the 200, and wants to have a conforming lot, and use the old case as the non-conforming lot? I thought I heard you say that.

Janice Loz: The antique cape with conforming, is what I was hearing. And then the 80-foot to access the house in the OC1.

Elizabeth Labbe: but what if he wanted to do it the other way?

Janice Loz: We could give him two variances. He would have two non-conforming lots. Where he wants to put the driveway – it eats into the frontage for the antique cape.

Elizabeth Labbe: But what if he wanted to use the ...check tape.

Robert Nute: Can I clarify?

Janice Loz: No.

Map is brought to Elizabeth.

Howard Kirchner: So from what I'm seeing here. 250 feet is the standard frontage. And you need a variance, which would leave...

Inaudible, several people talking.

Janice Loz: I think it would be easier if he had from here over, 250 feet. Then the cut won't be where he wants it. He'd have to move it across from the other neighbor. It was just for esthetics.

Sam Bower: And for convenience.

Janice Loz: I think because this house is so close to the road, where you are going to see it makes a lot more difference. It looks esthetically more pleasing.
Where are we at?

Sam Bower: I think one of Barb's main concern is that we don't want to look, as a board, that we give variances lightly. If there is a concern that we don't want to be giving variances too lightly, then maybe we should say that one of the lots, R3 needs to be conforming. Then he could have one variance for the OC1. Then satisfies both parties, to a degree.

Janice Loz: I agree. Plus a Variance is something that goes against what is allowed. So you don't want to give them out easily. I think it is a good compromise.
Are you OK Howard?

Howard Kirchner: Yes I understand. I think you are pursuing the proper line of thought and solution. With 250 for the antique cape, that leaves 80 feet of frontage for the larger lot with the house in the back. I'm fine with that, if that is fine with the applicant.

Sam Bower: we would deny the variance for R3, and would accept the variance for OC-1.

Barbara Marty: I don't know. That seems like convoluted way to do it. Because we aren't really addressing it as an OC1. We are addressing it as an R3 frontage issue. The 250 feet is an R3 regulation. An OC regulation is 300 feet. By making a conforming lot with 350 feet of frontage...I am still not comfortable that we are addressing the OC-1 problem. But I understand the logic.

MOTION:

Sam Bower: I would like to make a motion to accept the variance application, to grant the Variance application for the OC1, with non-conforming driveway frontage of 80 feet. Robert & Heidi Nute... 115 bible hill road. Map 12 lot 5. Relief from Article VIIA of the OC1 zoning ordinance.

Howard Kirchner: second.

Elizabeth Labbe: may I ask another question? Is there any R3, just for the subdivisions?

Janice Loz: just the 80 feet.

Sam Bower: So it would still be.

Janice Loz: Get through this and amend the motion. Just to clean it up. Any other discussion?

Elizabeth Labbe: So we are voting to approve one of his variances.

Barbara Marty: But we only have one.

Janice Loz: For the non-conforming 80 feet.

Sam Bower: Leaving the lot that is conforming with 250 feet.

Elizabeth Labbe: That is not exactly what he asked for, but we can still do that?

Janice Loz: Yes. Any other discussion?

Voice vote:

YES agrees,\

Passes with a 4-1 vote. Barbara Marty voting NO.

Janice Loz: I would like to make an amendment to make it an OC-R3 district.

Passes with a 4-1 vote, Barbara Marty voting NO.

Janice Loz: Do we have any other motions to make?

Mr. Nute, your request for a variance has passed. Any appeal must be made within 30 days.

We will move on. Dragonfly.

3. SPECIAL EXCEPTION APPLICATION - Case: ZBA 2017-01-02 Special Exception

Continuation of Public

Hearing from September 13, 2017 and October 11, 2017, November 8, 2017, and December 13

Applicant: Dragonfly Holdings, LLC

Property Owner: Dragonfly Property Management, LLC

Property Location: Warner Road, Map 3 Lot 33, Zoning District C-1 **Description:** The application will be reviewed in accordance with the

Merrimack County Superior Court order dated July 28, 2017 in the Zoning Board of Adjustment appeal

of Warner Road Holdings, LLC v. Town of Warner, Docket 217-2017-CV-00199.

Special Exception to Zoning

Article XI.B, Use Table Retail and Services Number 20 Other amusements and recreation services, indoor.

Proposed use: Indoor gun range and retail store

As noted in the December 13 minutes, we will continue the public hearing where we left off, questions from the board, and responses from the abutter and applicant. Do board members have any questions?

Howard Kirchner: About the question of recusal.

Janice Loz: Howard would like to make a statement at this time.

Howard Kirchner: Could you frame it?

Janice Loz: We received a letter asking Howard to recuse himself and Howard would like to address that.

Howard Kirchner: It is not ...I have no intention of recusing myself in this case. I do wish to inform the public that I read this case with no pre-judgement as to the desirability of the applicant's plans. There was a question in the letter from a resident, that stated that my question to the resident's counsel, or the renter's counsel, on the property about a



TOWN OF WARNER ZONING BOARD OF ADJUSTMENT

(603) 456-2298 Ext 8
FAX (603) 456-2297
landuse@warner.nh.us

PO BOX 26
WARNER NH 03278

APPROVED MEETING MINUTES

7:00 PM Wednesday, December 13, 2017

Warner Town Hall 5 East Main St.

Warner NH 03278

1. OPEN MEETING

Acting Chairperson Janice Loz Opened meeting at 7:06pm

2. ROLL CALL

In Attendance: :Janice Loz , Acting Chairperson

Howard Kirchner

Beverley Howe

Barbara Marty

Alternate Members Present: Sam Bower

Elizabeth Labbe

Beverly Howe has recused herself. Sam Bower sitting in for Permanent member Beverley Howe.

3. Review of Meeting minutes – November 8, 2017 Meeting and Nov 28, 2017 Site Visit

Edits from members.

Barbara Marty: page 10. Fourth sentence the word butters should be abutters, and two lines down from that the middle of the sentence education of lead should be education about leaæ.

Page 11, happens to people when there are too many guns, 'should be too". "I also expect" should be," I'm also an expert."

Page 18. John Leavit, in the middle, "I'm sorry most people...BUY guns."

Howard Kirchner: Excellent job that Judy did on the minutes. No problems recording the meeting.

Janice Loz: Even if we close the public hearing. Then we don't have any more back and forth. Then it's just the board.

Howard Kirchner: Correct. But are we going to close the public hearing tonight?

Janice Loz: No

Barb Marty: Make a motion to continue the public hearing until January 10th.

Sam Bower: Second.

Passed

Janice Loz: DECISION: Continue public hearing January 10th at 7pm or at some time noted in the agenda.

Thank you. If everyone could leave quietly, we do have another case to get to.

VARIANCE APPLICATION - Case: ZBA 2017-04 Variance

Applicant: Robert Nute and Heidi Holman

Property Owner: Robert Nute and Heidi Holman

Property Location: 115 Bible Hill Rd, Map 12, Lot 5

Description: Variance to the terms of Article VII/VIII, Section R3/OC-1 of the Zoning Ordinance for road frontage of less than frontage required in the R3/OC-1 districts for a proposed sub-division of the current 49+/- acre lot into one 3+/- acre lot and one 45+/- acre lot that would include the construction of one new home.

Janice Loz: And Beverly is back on the board.

I think we are going to Keep the board as is with Elisabeth and Sam, although Beverly can chime in a much as she possibly can. Should we remove an alternate? Elisabeth will be an alternate again. Beverly will be a voting member. No recusals.

Continue public hearing from November 8, Case number 2017-04 for a Variance. The applicants are Robert Nute, and Heidi Holman. 115 bible hill road Map 12, lot 5.

They request a Variance to Article VII of the Warner Zoning Ordinance.

Continue public hearing. Are there any public comments from the abutters or any public that was at the site walk?

David Kimball. 108 Bible Hill lane.

I am an abutter. My wife and I live directly across the street. I am very supportive. I don't think it would change the neighborhood at all, "inaudible."

Janice Loz: And you are the one that you were going to get letters from. But you got the person. Right. Did you get a second letter?

Robert Nute: Honestly, we ran out of time. We have been very busy. I did not feel it was absolutely necessary to get a letter. But she gave us a text message tonight that said good luck. So there is no opposition there. I did not actually go to her and request a letter. It is that time of year. And it seemed like, I was traveling, and if she was not going to stand up in opposition, I did not feel it was absolutely necessary to get a letter of support.

Janice Luz: Does the board have any comments or questions in reference to the site walk?

Barbara Marty: I have a question to the abutter, if I may. Do you notice any problem with runoff?

David Kimball: It would be impossible to have a problem at my house. Did anyone go on the site walk? It goes down from the knoll then goes up again.

Barbara Marty: So from your side of the street, that would never impact you.

David Kimball: Right.

Barbara Marty: Because we did have an issue for someone who is on the downhill, on the same side of the street. So obviously that side of the road would not effect you.

David Kimball: The brook has been there forever. Nothing that has been proposed changes anything.

Howard: If I may ask the same person. You have no problem leaving the logging road as a driveway for the back lot. That would mean putting in another road? There was a question of moving a line over which would mean having to put in another road further to the edge of the lot. Well, "inaudible" across the street from that driveway. Is that correct?

David Kimball: we are the house directly across from the existing house.

Howard Kirchner: Then it was the other abutter that says good luck.

David Kimball: Yes, that was Joy.

Robert Nute: She has been very supportive. I just didn't want to ask her, hey last minute would you mind writing a letter?

Howard Kirchner: That isn't necessary. Thank you.

Barbara Marty: We've talked about the road frontage in the R3 district, but have not said anything about the OC1 district, which is also bundled into this request. In the OC1 district there is a 300 ft minimum frontage requirement that hasn't been talked about, because there is no road frontage on this piece of property, in the OC1 district. Also, the open conservation district is designated for agriculture forestry, and a very limited residential use on inaccessible land, which because of steepness of slope, poor drainage, or periodic flooding shall not be intensely developed, which is the definition of an OC1 District. I am questioning why we would allow a building when there is no frontage, it obviously is a very steep slope, with poor drainage, that has with a pond or a brook that feeds into the Warner river. So the runoff could cause problems down the road, And we have heard from one of the abutters that

there is already drainage issues on the road. So I think that the people who set the zoning districts got it right.

Robert Nute: May I respond? I don't think it is fair to have one lot considered in two zoning districts. I think it was a mistake in the actual creation of the lot. Because it doesn't...

Barbara Marty: Every property on that road is in two zoning districts, except for that one little lot below you. Everyone has 500 feet r3.

Robert Nute: Is it 500 feet? Did we determine?

Barbara Marty: Yes it is.

Robert Nute: Well, that point aside then. The steep slope. The building area is flat; that's why we took the site walk and you could see that it's very flat and it's amenable to building. Calling it a drainage issue regarding the soil is not.... I don't think we can make that determination without a test pit. The entire hill is sand. It drains well.

Barbara Marty: you'll be putting more impermeable surface on that property.

Robert Nute: Roughly 2000-2500 square feet. The road is already in. That's not the...

Barbara Marty: But you are going to pave part of that road as well. Yes?

Robert Nute: That value from pavement to what you have right there, with hardpack, is essentially the same when you look at stone wall calculations.

Barbara Marty: But you have to understand if make this, if we allow this Variance, it is because we feel the land, not you, this has nothing to do with you as an individual, or your project. It is because we feel the land has some special designation, making it not have to conform to these zoning restrictions.

Robert Nute: Understood

Robert Nute: if we could just bulldoze the house, and build up there.

Barbara Marty: You could. You absolutely could.

Robert Nute: But we are trying to preserve the house as an antique home in the town.

Barbara Marty: And you could still enjoy the views at the top of the property, the way you do now.

Janice Loz: I don't think this is intensely developed. I don't think it fits the definition of intensely developed.

Barbara Marty: No, but if you grant it here, you are essentially granting it to every other person and there are three roads around this open conservation...

Janice Loz: Not necessarily. I think you have to look at every case individually.

Barbara Marty: Yes, but.

Janice Loz: And I don't think that that one house up on the hill is an intensely developed . I don't think it fits the definition of intensely developed.

Barbara Marty: If you look at the zoning map, the three roads that surround that open conservation area, almost every property is in the same situation where they have the 500 feet of R3 district , where the homes exist, and then there's the open conservation land. If you find in favor of this, for this use, you'll be hard pressed not to grant it to the people on the three roads surrounding it that are in the same exact situation. I don't see anything unique about this piece of property that will make it eligible for a Variance. But you have to discuss it.

Beverley Howe: I have a problem with making two non-conforming lots. I don't think that's OK.

Howard Kirchner: That's why we have Variances. So you have two non-conforming lots. Every lot is unique.

Beverley Howe: But that's a lot. If you are going to divide it, if you do divide it, then there should be at least part of it that is conforming. Why not one conforming? And not two?

Robert Nute: We did talk about that in the Planning Board conceptual review. When we were on site I could not talk about how that would require moving that existing opening. To me, I thought it would be an impact that would be unnecessary to the neighbor. Now the driveway is offset from the house, If we are to make the existing house conforming, then the driveway would be directly in front of the house.

Beverley Howe: Well if you put it further down.

Sam Bower: I think that's a different problem. I don't think you can go any further down because it comes down and then it up a little bit so it is not straight across from the neighbor. And so then you could go straight across from the neighbor.

Robert Nute: Right.

Sam Bower: but if you went any more over to the right, it would be over your property line.

Robert Nute: We could squeeze it in the corner.

Janice Loz: Would that give you one conforming and one non- conforming? Would that be more acceptable if there was one conforming lot?

Beverley Howe: That would be OK for me, but then there is Barb's point and that's something else again.

Sam Bower: I think having two places in non-compliance. If we do go forward, then we are not saying this is OK for everyone to do. You could have two Variances. Given the convenience, we thought that the convenience was worth it for the property. It's just a convenience to the existing house, because the road, "inaudible...too many people talking."

Janice Loz: If you have one conforming lot, and the non-conforming lot. You could argue a hardship. You couldn't access that back part of the property without having a variance for the road frontage. He might not have road frontage, but he has a lot of setback.

Beverley: you would have plenty of road frontage. Neither or the new will be conforming. Neither will have enough frontage. The antique cape will have the 250 if you make it.

Howard Kirchner: You can do it if you grant the Variance.

Beverley Howe: Why would you?

Howard Kirchner: I didn't write the zoning ordinance or anything like that. But way out in there. It's just...You have an old house. Why does that old house have to have 250 feet .

Beverley Howe: Because it does now.

Robert Nute: There is 330 total now.

Janice Loz: I would feel better if the antique had 250ft, and the new house had a Variance for a smaller frontage, I would find that to be acceptable. So that he can access his property in back.

Elizabeth Labbe: I have a question. Can you talk to me about the hardship? At the last...what I was reading about the hardship.

Janice Loz: If he doesn't have a Variance for second lot, he can not build. And he's got all the property.

Howard: He can't maintain two houses.

Barbara Marty: But you bought the house, and that opened conservation. You can't buy a property and then claim hardship because you don't like it anymore.

Janice, Barbara, Robert, conversation about the property that is difficult to transcribe as there are one word, talking over one another.

Robert Nute: To my knowledge, there is no OC1 district, which abuts a road. Which makes everything subject to that R3 zone. We are not in a priority conservation district. The conservation would not take it because it's not connected. Unless you can determine that the OC1 is the prevailing district on that lot... How can you actually have two districts on one lot. Your driveway is subject to R3 requirement, and everything is subject so OC1. But they have different frontage. But what I'm saying is where the curb cut is becomes the prevailing zoning district. Which is R3, not OC1.

BARBARA MARTY: FOR 500 feet into the property. And then it's OC1. There are other places in town where the OC1 is on road frontage and in those cases they would not need a variance because they have the frontage that they need. In the case of most of the properties on the 3 roads that surround that

OC1 district, . Everyone seems to have a little piece, except for a few properties, they are in your exact situation.

Robert Nute: So only that 500 feet, do the r3 apply. Everything is OC1, and the only thing we are not meeting in Oc1, is the frontage. Just because it is deemed to be less desirable, does not mean you cannot build on it.

Sam Bower: Why the desire for the whole project in the first place?

Robert Nute: We don't want to leave Warner. We like it up there

Howard Kirchner: You don't have to bulldoze the antique house.

Beverley Howe: you going to sell the old house? Then it would be on a non-conforming lot if you divided it.

Elizabeth Labbe: when you go to sell it on a non-conforming lot, what does that mean?

Robert Nute: It does not mean anything. As long as it is an approved **Variance**.

Sam Bower: One more question. If for some reason not to happen. Would that change your decision to stay or not stay in Warner?

Robert Nute: I cannot say. We like the town of Warner.

Janice Loz: We cannot make it contingent upon that.

Robert Nute: Ultimately. It got heated at times. These lots are built in a beautiful area, and then an OC1. When these were broken up, there was not a lot of planning.

Barbara Marty: Now when they plan houses, they put houses with open spaces. Then houses were closer to the road, with open spaces in the back between the back.

Robert Nute: What I think actually happened. It was an area of town, with a gristmill at the bottom of the hill. We were one of the first to be put on that road. That property of ours was once the full width, the small one and the one next to it. It just sort of happened. On what someone wanted to purchase.

Beverley Howe: They did give you a regulation piece of land frontage on the road.

Sam Bower: I have a question about OC1.

Barbara Marty: They are permissible, but they don't want the area intensely developed.

Sam Bower: Does this bring up the risk of others in the area doing the same? Everyone is allowed to until all 20 neighbors want to do it.

Barbara Marty: Whatever we base our finding here. If we find that ordinances don't have to be observed, then the next person that comes along, if you found that this piece of land has a similar situation, then all of a sudden that beautiful view on the ridge, is suddenly dotted with homes.

Sam Bower: If residents are allowed to be built there, then it is our discretion.

Barbara Marty: there are not other houses.

Janice Loz: I don't think that putting that house on the ridge goes against OC1.

Howard: I don't think that is setting a precedent.

Barbara Marty: It is something that is not allowed.

Janice Loz: I think the lot lends itself well to two residences. Especially with the logging road.

Robert Nute: My interpretation of the zoning was to reduce the overcrowding.

Janice Loz: You are meeting all the other setbacks. These houses are not subdivisions that are all together.

Robert Nute: almost a quarter of a mile.

Barbara Marty: I don't think it is in the spirit of the ordinance.

Natalie: I question how many lots have the opportunity to even request a **Variance**. I think there are only two other lots in the area.

Motion to close the public hearing: Beverley Howe

Second: Howard

All in favor of closing the public hearing.

DECISION: Continue the board deliberations on January 10th.

VARIANCE APPLICATION - Case: ZBA 2017-05 Variance

Applicant: Joseph Mendola

Property Owner: David V. Bixby

Property Location: Northeast of intersection of Bog Road and Poverty Plains Road, Map 7, Lot 69

Description: Variance to the terms of Article VI, Section C of the Zoning Ordinance, proposed single family residence could not be constructed on map 7 lot 69 pertaining to lot size and set backs.

Represented by Jason Beligus. Representing Joe Mendola.