

Subject: More Warner ZBA Questions

From: "Janice Loz" <janice@screamingwomandesign.com>

Date: 8/16/2020, 1:00 PM

To: "Matt Monahan" <mmonahan@cnhrpc.org>

CC: Landuse <landuse@warner.nh.us>, Diane <administrator@warner.nh.us>

Hi Matt,

It's me again...A board member has a question, see below, about Article 15.B. non-conforming use. I have pasted the article in this email for your convenience. The way he is interrupting Article XV.B. is someone can only build a residence on a non-conforming lot. They cannot build a business without a Variance. If you could clear this up for us, I would appreciate it.

For what it is worth, my interruption is the terms outlined in Article XV.B. apply to residences being built on a non-conforming lot. It does not say "A non-conforming lot may be built upon for residential purposes only."

Thank you. - Janice

Article XV - NON-CONFORMING USE

A. When a non-conforming use (existing) of land or buildings has been discontinued for a year, the land or buildings shall be used thereafter only in conformity to this ordinance.

B. A non-conforming lot may be built upon, for a residential purposes only, if, at the time of the enactment of this Ordinance (or any amendment thereto if it is such amendment that renders the lot non-conforming), (a) the owner or owners of the lot owned no contiguous land, and (b) it has a frontage of at least fifty (50) feet, and (c) the lot is able to sustain a state approved waste disposal system or connect to municipal sewage.

>>> Harry Seidel<aresidentialdesign@gmail.com> 8/14/2020 9:38 PM >>>
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603.738.4460

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Matt Monahan
Principal Planner
Central New Hampshire Regional Planning Commission
Phone: (603) 226-6020

Fax: (603) 226-6023

Subject: Re: Warner ZBA Questions

From: "Janice Loz" <janice@screamingwomandesign.com>

Date: 8/16/2020, 1:14 PM

To: aresidentialdesign@gmail.com

CC: "Barb Marty" <bmarty333@gmail.com>, "SAM BOWER" <samgfarm@gmail.com>, "Elizabeth Labbe" <elizabeth@labbepaintingnh.com>, Beverley_Howe_ <bevhowe@tds.net>, "Howard Kirchner" <hjkirchner@tds.net>, "SAM BOWER" <kgfarm@tds.net>, Diane <administrator@warner.nh.us>, Landuse <landuse@warner.nh.us>

Harry,

I have forwarded your question on to Matt Monahan. He works for the Central NH Regional Planning Commission, and has contracted with Warner for a specified amount of hours a week. I trust his response are thorough and informative.

One of his responsibilities is to be a resource to Land Use office so the Planning Board Chair won't be as burdened in responding to technical issues. Also, to help applicants before the Planning Board to prepare for complicated cases up for review. He will not be helping ZBA applicants prepare, but, will be able to help us with questions.

I believe that Article XV.B. does not definitively state that only a residence may be built on a non-conforming lot. I believe it lays out the terms as they apply to residences. But, I have forwarded your question on for consideration.

Thank you.

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To: Janice Loz <janice@screamingwomandesign.com>

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Subject: Special Exception - Granite Roots Construction
From: "Janice Loz" <janice@screamingwomandesign.com>
Date: 8/14/2020, 4:27 PM
To: Landuse <landuse@warner.nh.us>

Hi Deb,

I know you are not in today, but, I wanted to send this your way while it was on my mind.

I emailed the two emails pasted below to ZBA members already and copied you. Could you send these communications to the applicant, Pete Swislosky (spelling not sure?).

If he wants to pursue the Special Exception we will put him on the agenda for September 9th meeting.

I will be out of town all next week. Going camping. If you need me and cannot get a hold of me through email you can always text or call me at 738.4460.

Thanks.
Janice

Email response from: Matt Monahan
To: Janice Loz - ZBA Chair

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Subject: Original subdivision hearing

From: Barbara Marty <bmarty333@gmail.com>

Date: 8/14/2020, 9:40 AM

To: janice Loz <janice@screamingwomandesign.com>, Landuse <landuse@warner.nh.us>

Hi ladies,

Is there a record of the Planning Board meeting discussing the subdivision of these lots on Poverty Plains Road? It might be helpful to have some history of how this little lot at the end of the road was created. The property card should show when they were subdivided.

Thanks,

Barbara

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I found an article on the NH Municipal site, which states . . . "if there is a "lot of record" saving clause in our ordinances. This clause exempts the pre-existing lots from later-enacted frontage and lot size requirements, allowing buildings on those lots by Special Exception." (*But, It's Grandfathered! Six Common Myths about Nonconforming Uses* By C. Christine Fillmore, Esq. <https://www.nhmunicipal.org/town-city-article/it%E2%80%99s-grandfathered-six-common-myths-about-nonconforming-uses>)

Questions:

1. We have a lot of record definition in ordinances. Does that mean the applicants does not have to seek a Variance? Is the Special Exception sufficient for their needs.
2. If an application for a Special Exception is relevant to the terms of Article VI, B. Use Table 1. Would Article VI, C. relative to yard frontage and lot requirements apply, or not? Again, does the lot of record saving clause negate the need to follow the yard frontage and lot requirements.?
3. The board struggled with whether the term subdivision would apply to this lot? Major or Minor. I didn't think it did, but, would like clarification.
4. Also, whether Open Space Development was relative to this Special Exception in an R-2?

Thank you.

Janice

Janice Loz

janice@screamingwomandesign.com

603.738.4460

Subject: Re: Comments to me by email
From: Barbara Marty <bmarty333@gmail.com>
Date: 8/13/2020, 3:07 PM
To: Landuse <landuse@warner.nh.us>

There is one saving clause in the Warner Ordinances, but it does not relate to nonconforming lots.

Thanks,
Barbara

ARTICLE XX

SAVING CLAUSE

The invalidity of any provision of this ordinance shall not in any way affect the validity of any other

provision.

On Thu, Aug 13, 2020 at 2:59 PM Barbara Marty <bmarty333@gmail.com> wrote:

Deb and Janice,

I see that the term is defined in the ordinances but I don't see any saving clauses in the ordinances. So they need a variance, That is what you are highlighting correct?

Thank you,

Barbara

On Thu, Aug 13, 2020 at 1:57 PM Landuse <landuse@warner.nh.us> wrote:

Attention: ZBA Members:

Please forward any comments to the Land Use office and Deb. Please be careful not to communicate to each other.

Thank you. - Janice

Here is a link to the NH Municipal article titled "But, It's Grandfathered! Six Common Myths about Nonconforming Uses"

By C. Christine Fillmore, Esq. <https://www.nhmunicipal.org/town-city-article/it%E2%80%99s-grandfathered-six-common-myths-about-nonconforming-uses>

Of particular interest is the paragraph titled "Myth #3"

Myth #3: The owner of a substandard lot (smaller than current zoning allows) is grandfathered for every use allowed in that district.

This is not true. Remember from Myth #1, grandfathering protects lawfully pre-existing nonconforming uses. A vacant lot may have existed before zoning made it substandard, but it isn't being "used" yet. This means ordinary grandfathering does not protect the owner of this property. There are three ways an owner might build on a substandard lot. The first and most straightforward is if there is a "lot of record" savings clause in the zoning ordinance. These clauses exempt pre-existing lots from later-enacted frontage and/or lot size requirements, or in some cases, allow buildings on those lots by special exception. If there is a savings clause, then the owner can exercise whatever rights that clause gives the owners of substandard lots. (Here again, the terms of the ordinance are really important.)

If there is no savings clause in the ordinance, then the owner must obtain a variance from the zoning board of adjustment (ZBA), and a building permit and site plan approval (as the municipality requires), to build any structure on a substandard lot. The purpose of a variance is to protect the Constitutional rights of the owner by preventing him or her from being deprived of the viable economic use of the property. However, even the Constitution does not provide that every lot, regardless of size, must support at least one single-family home. The ZBA must determine whether the variance is appropriate for that particular lot, taking into account all of the facts and circumstances. For example, an owner of a substandard shorefront lot was denied a variance for a seasonal home because there was no adequate place for a septic system. *Carter v. Derry*, 113 N.H. 1 (1973).

The Town of Warner has the term "Lot of record" defined on page 4 of the Ordinances. Which reads: "Lot of record" means land designated as a separate and distinct parcel in a legally recorded deed and/or filed in the records of Merrimack County, New Hampshire."

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Warner Landuse Office
PO Box 265
Warner, NH 03278
603.456.2298 x223
landuse@warner.nh.us

Please note that all communication to and from this email address is subject to NH RSA 91-A which affords the public access to this information, with the exception of limited, sensitive information.

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Subject: Informational - ZBA

From: "Janice Loz" <janice@screamingwomandesign.com>

Date: 8/13/2020, 1:51 PM

To: Landuse <landuse@warner.nh.us>

CC: Diane <administrator@warner.nh.us>

Deb,

Could you please forward this information on the ZBA members, and copy me on the email. They could send any comments to you in an email. They need to be careful not to communicate with each other email.

Deb, Please copy and paste the following to ZBA members in an email. Thank you - Janice

Attention: ZBA Members:

Please forward any comments to the Land Use office and Deb. Please be careful not to communicate to each other.

Thank you. - Janice

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