



Town of Warner

Planning Board

DRAFT – Meeting Minutes

January 4, 2021, 7:00 PM

No physical location for this meeting; it was conducted via Zoom.

I. OPEN MEETING and ROLL CALL

At 7:03 p.m., Chairman Ben Frost called the meeting to order and made this statement: “As Chair of the Planning Board, I am recognizing that an emergency exists and I’m invoking the provisions of RSA 91-A: 2,III (b). Federal, State and local officials have determined that large gatherings people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is essential to the continued operation of the Town of Warner government and services which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location. At this time, I also welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in an unusual manner and under unusual circumstances, the usual rules of conduct and decorum apply. Please note that all votes taken during this meeting shall be done by roll call vote.”

ROLL CALL: Ben Frost (Chairman), 1 other in residence; Don Hall (Vice-chairman), 3 others in residence; Clyde Carson (Board of Selectmen representative), 1 other in

residence; Romeo Dubreuil, 1 other in residence; Andy Bodnarik, 2 others in residence; Ben Inman, 1 other in residence; James Gaffney, 1 other in residence.

Also present: Ben Osgood (representing Comet, LLC); Paul Kneeland, managing partner of Comet, LLC; Mike Ayotte; Alice Chamberlain; Barbara Marty; Ken Milender, Chairman of the Warner River **Local** Advisory Committee (**WRLAC**); Janice Loz, Landuse Administrator; and Ray Carbone, Recording Secretary.

II. APPROVAL OF MINUTES: December 7, 2020

The Board suggested minor revisions to the draft minutes. Bodnarik made a motion to approve the minutes as amended; Inman seconded. ROLL CALL: Hall, yes; Carson, yes; Dubreuil, yes; Bodnarik, yes; Inman, yes; Gaffney, yes; Frost, yes. Motion passed unanimously.

III. NEW BUSINESS: Lot Line Adjustment

Applicant: Michael and Annie Ayotte
Agent: Michael and Annie Ayotte
Address: 40 Mink Hill Lane, Warner, NH 03278
Map/Lot: Map 09, Lots 7-2
District: OC-1
Description: Lot Line Adjustment

Chairman Frost said that the Board had discussed this issue at its Nov. 2, 2020 meeting. It involves the transfer of five acres from the Ayottes to Matt and Michele Courser. There is no new buildable lot being created, he said, so this is basically a lot line adjustment.

Mike Ayotte said that he and his wife own 12 acres so the transfer would result in a reduction in their lot to 7 acres; the Coursers' currently have an 8.2 **acres** lot, so the transfer would give them a 13.2 acre lot.

Inman noted that there are no dimensions on the plan submitted with the application. Dubreuil said that some of the property owners are not correctly identified. Loz said that all the current abutters had been notified about tonight's meeting. Several abutters identified themselves at the meeting; none raised any objections.

Hall made a motion that the Board accept jurisdiction over the application; Inman seconded. ROLL CALL: Hall, yes; Carson, yes; Dubreuil, yes; Bodnarik, yes; Inman, yes; Gaffney, yes; Frost, yes. Motion passed unanimously.

Chairman Frost said that approval of the application would hinge on some minor

conditions: correcting the names of all abutters and adding a tabular noted that listed the sizes of both properties, before and after the action.

Inman made a motion to approve the application as amended; Dubreuil seconded. ROLL CALL: Hall, yes; Carson, yes; Dubreuil, yes; Bodnarik, yes; Inman, yes; Gaffney, yes; Frost, yes. Motion passed unanimously.

Chairman Frost asked the Board if there was any objection to his signing the application as approved after the conditions are met. There were no objections.

IV. OLD BUSINESS:

A. Continued Public Hearing – Application for Site Plan Review

Applicant: Comet, LLC

Agent: Benjamin C. Osgood Jr., PE

Address: Route 103 West, adjacent to the Annis Roundabout

Map/Lot: Map 35, Lots 4-1 and 4-2

District: C-1 and INT

Description: 7,000 sf. retail building and drive through donut shop

Engineer Ben Osgood, representing Comet, LLC, provided an update on the plan that could hopefully result in having the application approved at one of the next few Board meetings. The most important change is that the owners have decided that, given the current state of the economy regarding business rental properties, they are setting aside the idea of building the larger retail building at this time. That means that their original plan to build the donut shop building (which is scheduled to be leased by the local Dunkin Donut franchisee) should be able to move forward more easily, on the land identified as Lot 2.

Osgood also said he'd had a Zoom meeting recently with officials with the NH Department of Transportation (DOT) regarding an update the estimated traffic count for the development and some other "minor tweaks" to the plans. The Town zoning would require 51 parking spaces parking spaces for the single building but the Comet plan only has 41 spaces, Osgood said Dunkin Donuts national figures indicate that a shop of this size would only require 27 spaces at its busiest times, so the owners will apply for a waiver.

Osgood said that leaves only the State's Alteration Of Terrain (AOT) issues unresolved. The problem has been with the plan's Wildlife Study, which was completed by Comet's contracted botanist. Unfortunately, the NH Fish & Game Department, which oversees the process, is currently overwhelmed with related applications. The AOT staff has told Osgood they will try to move the plan forward more quickly since the study is now completed, he said. There is no reason to expect any more related problems because the plan includes a buffer of more than a half-acre between the properties and any wetlands (where turtles and other species might be impacted) as well as the adjacent Warner River; a new conservation easement will further protect the areas.

Osgood said that the DOT has indicated it will likely have no problem with the revised single building plan; the department has said that the Comet's properties (originally a single large lot that was subdivided into four lots, and later the two rear lots were joined to create a total of three lots) are entitled to have one driveway for each lot off NH Route 103. At this time, the owners are only asking for an entrance-only driveway for Lot 1 and an entrance/exit driveway for Lot 2; the latter would serve both lots with cross easement.

The signage still needs to be presented and approved. Osgood also said that he recently sent renderings of the buildings' architecture to the Town; at earlier meetings, the Board indicated that the structures could be made to have more in common visually with the general structural appearance in Warner.

Inman asked how Lot 1 will be kept during/after construction of the Lot 2 donut building. Osgood said he thought the site would **be** filled, loamed and seeded. **Chairman** Frost pointed out that the project's stormwater detention systems straddles both Lots 1 and 2, so some paving would need to be done on Lot 1 to maintain the integrity of the system. Osgood said that the underground construction would need to be completed but that the system could still work with only the Lot 2 parking lot area completed. **Chairman** Frost said he is concerned about the system mostly due to the sensitivity of both the nearby Warner River and the wetlands, so he would like to see Comet submit a construction sequence plan, which the Town could then have an independent consultant evaluate. Osgood said that could be supplied at the next meeting.

Dubreuil said he still has concerns about the configuration of the driving lanes at the donut shop building, which could be confusing for drivers (and even dangerous for pedestrians). In his research, Dubreuil said that one solution might be to put the mobile order pick-up window on the opposite side of the building than the standard drive-through window. Osgood said that the proposed layout is similar as what's used at the McDonalds restaurant across the street, but it might be possible to do something with signage and/or crosswalks to address safety concerns.

Hall said that the whole area around the roundabout has become increasing congested and that signage at the McDonalds, as well as the other retail stores in the area, appears to have little impact. If the DOT approves of the Comet, LLC proposals regarding traffic, etc., it makes little sense for the Board to "drag this thing through the muck," Hall said. "The traffic is not going away... There's a lot more cars." Frost reminded the Board that DOT has jurisdiction over entrance/exit issues onto Rte. 103 but not other issues related to the State highway.

Carson asked if the owners had looked any further into sharing the entrance/exit at the adjacent Evans Expressmart property. He also asked about pedestrian traffic in the area: whether there are plans to extend the sidewalk on that side of Rte. 103 (and, if so, if those sidewalks would also be able to handle bicycle traffic), and if there has been any discussion about pedestrians possibly running back-and-forth between the Park & Ride and the Dunkin Donuts. Osgood said that DOT was opposed to the idea of having

a sidewalk on the Comet properties side of Rte. 103 and preferred that pedestrians use the existing pedestrian crosswalk at the rotary. In addition, Osgood said he's not heard back from Evans but that the owner does not appear to be enthusiastic about the idea of sharing his driveway; he said would try to, at the least, get an email message from Evans with a formal reply. Dubreuil said he would like to see more details in the plans regarding pedestrian traffic on the site. There was general discussion about requiring a possible "off-site" sidewalk for the project.

Chairman Frost noted that when the original subdivision of this property into three lots was approved Oct. 16, 2000, the Board limited the number of access points onto Rte. 103: a single entrance/exit to be shared by Lots 1 and 2, and a single entrance/exit for Lot 3. (A third driveway would be used for a different lot.). **Chairman** Frost said that the two-access points conditions are still attached to the Comet properties; if that is to be altered, the Board will need to reconsider the issue. The Chairman told Osgood that the owners need to consider whether they want to amend the original 20-year-old subdivision plan that was approved by the Board in 2000, in addition to the current site plan. Osgood said that he is looking to find a copy of the original subdivision plan. **Chairman** Frost said he would have a copy sent to him.

Gaffney said that some the discussion regarding access points onto the site appears to put the property owners between "a rock and a hard place." He suggested that a DOT representative be invited to a future meeting to resolve any conflicting ideas between the State agency and the Board.

Paul Kneeland, Comet's Managing Partner, said that he was "a little discouraged" about the Board's deliberations at the last few meetings. He said that the owners began the development process in May 2020 and that they have spent "a significant amount of money on consultants" regarding what he called an "incredibly small project." "My sense is that there's an anti-development sentiment in Warner," he said. "I don't know (but) that's what I'm gleaning from this hearing." Kneeland asked what the Board would like to see on the property.

Chairman Frost said that was the owners' decision. Kneeland replied that the Board does, indirectly, determine what can be built on the property by the conditions it establishes. "If you're going to impose all of these conditions which are time-consuming, expensive to design and to build, and make it non-economic, I guess I've got a hard decision to make," he said. "We're into this (project) eight months now. I've (still) got to deal with the State (DOT), which is incredibly difficult." Kneeland said that it was unclear to him whether the Town or the DOT has jurisdiction over the number of access points onto Rte. 103, but it appeared that the Board is requiring a smaller number due to "a promise that was made by an applicant who I don't know and never seen, 20 years ago," he said. Kneeland asked why the number of access points was not addressed at an earlier meeting. Frost said the condition was addressed at a Board meeting at least three months ago, and that he read the specific language into the official record "at least two months ago."

Kneeland asked if the Board could indicate tonight whether its members intended to

impose the lower number of access points on his LLC's application. **Chairman** Frost said that the condition was approved 20 years ago and could not be ignored. "You have to deal with it one way or another," **Chairman** Frost explained. "This Planning Board cannot approve a plan that violates that condition... You either comply with the condition or you seek relief from the condition."

Kneeland asked if the Board could be polled to see if it were likely to approve a request for relief from the access points condition, calling it a "potential deal-killer." The approval would allow two curb cuts (access points); the proposal would still have to be formally considered as an amendment to the previously approved subdivision plan and approved at a subsequent Board meeting.

Vice-Chairman Hall said that Kneeland had a valid point about a resistance to commercial development in Warner. He noted that the Town has contemplated several proposals for this property in the past 30 years but none has move forward because commercial developers have not be always been treated respectfully. He said that Warner needs these commercial enterprises and the tax revenue they produce. Hall suggested that the Board rescind the curb-cut condition from the Comet, LLC property; **Chairman** Frost said that is doable, but the request must come from the property owner.

Kneeland said that if the Board is not predisposed to somehow change the curb-cut condition, he would rather know now, rather than "spend a lot more time and a lot more money trying to pursue something that's simply not doable."

Gaffney proposed that the Board consider a nonbinding vote – or simply do a "temperature of each member" poll – asking the members if would be inclined to accept any agreement the property owners and the DOT make regarding the relevant traffic issues. "We know DOT is going to do their due diligence," he said. (Osgood said he has incorporated into the current proposal plans all of the most recent recommendations from the DOT.) **Chairman** Frost agreed with Gaffney and began polling the Board members. Hall, Inman, Bodnarik and **Chairman** Frost said they would support the idea. But Carson said he would tend to trust that when the Board originally established the condition in 2000, it had the overall safety and wellbeing of Town residents in mind; he stated again that if it's possible to share the use of the Evans Expressway entrance/exit, that would likely resolve his safety concerns, but beyond that, his would likely vote to retain the conditions. Dubreuil said he would be uncomfortable making a decision on the condition at this time because so much was still unknown at this time: "We don't even know what's going to go on that lot. We don't even know what kind of structure," he said, adding that he thought it was "inappropriate" to make the decision at this time.

Chairman Frost said that he "bristles at the suggestion that this Board is anti-development." He said that the group must follow proper protocol and that "this application has been delayed not at all by this Board." He cited delays in the State permitting process that has caused the Board to "continue to continue" the application. "It's not because of this Board's proceedings that this application has been here for so

many months,” he said.

Alice Chamberlain asked if Comet’s current proposal is to delay developing Lot 1. Osgood said that was accurate, because the proposed 7,000 square-foot building was original meant to have five retail spaces (including a drive-in bank window operation), but the coronavirus pandemic has seen the “collapse of the brick-and-mortar retail stores” so there is not sufficient interest at this time. Kneeland said that if the Dunkin Donuts store is as successful as he thinks it will be, there will be interest in being next to the restaurant. “Development breeds development,” he said.

Ken Milender, Chairman of the **WRLAC**, said his group has expressed its concerns about the project (mostly regarding stormwater runoff) in two letters to the Board and one letter to the NH Department of Environmental Services (DES)’s **AOT** Bureau, but there has been no response from either group. Osgood said that he responded to the first letter; he was unable to respond to the second until Comet received the completed wildlife report, which was just received earlier today. Osgood said he hoped the **AOT** would be able to respond within the next 30 days or so.

Chairman Frost suggested that Osgood look at the design of the building on Lot 1 as it appears to drivers traveling out of the downtown and down the hill into the area. He said the architect should find a way to conceal the HVAC units on the roof because the road is “a gateway to the community.”

Chairman Frost closed the hearing and said the Board will be ready to reopen it at its Feb. 1 meeting.

B. Zoning Amendment Discussion

Chairman Frost said that the Board could postpone its discussion on the two articles submitted by citizens petition until its first public hearing on Jan. 18. However, he suggested that the group review some of the other issues that might become amendments.

Chairman Frost said he reviewed the Town’s provisions regarding Workforce Housing, XIV-A Zoning Ordinance. He said some parts don’t make sense, some don’t match the State statutes, and that, taken as a whole, the current provisions do not fully meet the Town’s legal requirements. He offered changes that would correct problems and simplify the language in the **Ordinance**. He led the Board through a draft of his changes, indicating that some are minor and others that are more substantive.

Gaffney asked **Chairman** Frost about some of the changes related to where Workforce Housing could be located in Town. **Chairman** Frost said that Workforce Housing developments are generally built in two or more structures on a lot (for example, two 12-

units housing units), which is why he refers to them as “Commercial-Scale Residential Development; that’s why they’re taxed as Commercial enterprises. There must be a place for these multifamily, multi-unit structures in Town (according to State law) and the question for Warner is, where should they be allowed. “In my view, the most appropriate place for this kind of development is the commercial zone,” Frost said.

Gaffney said that the substantive changes that **Chairman** Frost suggests could have a significant impact on the nature of a neighborhood. However, problems associated with the coronavirus pandemic have made substantive deliberations especially difficult in the last year, so he asked if the Board could bring a more modest proposal to voters at the **Annual Town Meeting** in March. That would allow give the Board more time to do it “due diligence” evaluating the more significant suggestions.

Chairman Frost said the current Town ordinance does not comply with the NH State statutes, which makes the Town vulnerable to a construction company’s lawsuit. In that case, a loss could create a “builder’s remedy” where the court decides that the builder does not need to return to the Town for a building permit since, in effect, its ruling is the permit. Such a judgement is “rare but increasingly” possible, Frost said. “We don’t want to lose control of the development process,” he explained, adding that the possibility of such legal action could increase after this public discussion.

Dubreuil noted there has been a sharp increase in building Workforce Housing in New Hampshire recently, due to the current housing shortage and the drastic increase in land prices.

Gaffney asked if the Town could create a new building zone that would be specifically for Workforce Housing, and **Chairman** Frost said that is possible. Bodnarik wondered if the Town could find temporary protection against “builder’s remedy” lawsuits by allowing multifamily Workforce Housing in all zones by **Special Exception**, “as a first step.” At the Town Meeting, leaders could inform voters that the Planning Board and the Zoning Board of Adjustment will be studying the issues more closely in the near future. **Chairman** Frost said he would have to consider whether that would be suitable.

Chairman Frost said he would like to move forward with scheduling the necessary public hearings for the zoning amendments. The first would be Jan. 18; at that one, the citizens who presented the petitioned articles will be asked to address their goals, and the Board can consider recommendations. The **Chairman** also suggested presenting the changes he’s outline for the Workforce Housing **Ordinance** and allow the public hearing to indicate for the Board if the changes should be cut back or altered. If there are any substantive changes to any of the articles, a second public hearing would be held on Feb. 1. Gafney said that he would prefer to hold two hearings in any case, since some residents may only learn of the Workforce Housing amendment at the first one; the second hearing will give more people an opportunity to hear and respond to the amendment. **Chairman** Frost asked for a show of hands to see if the Board members agreed with the public hearings ideas. The majority did.

Chairman Frost also noted concerns about the Town's legal definition of "Agritourism," which has been discussed several times in the last year. He said the State statutes have a legal definition and that the Town's zoning ordinances could be amended to refer to that definition, and that it's allowable in some zones by **Special Exception**; that would require site plan review and approval from the Zoning Board of Adjustment. **Chairman** Frost said he would prepare a proposed amendment for consideration at the upcoming public hearings.

Barb Marty presented some additional information about changes that could be considered for an amendment to the **Accessory Apartment** application for a single family home: parking should be provided for tenants; no new curb cuts allowed for separate driveways; the addition should be designed so that the external appearance of the building remains the same (single family house); and any separate entrance to be on the side of the building. Marty said that some New Hampshire towns require a residence of at least 30 days to guard against short-term rentals. **Chairman** Frost said he has some reservations about the short-term rentals provision because some towns are having problems with its enforcement. Several Board members supported the idea of setting aside the short-term rental proposal, and Marty said she would remove it.

V. COMMUNICATIONS

Chairman Frost said that a letter came to the Town from an attorney representing a homeowner in Salisbury. The owner is converting a large barn into a State motor vehicle inspection site. The notification was made because the driveway onto the property is at 618 Kearsarge Mountain Road in Warner.

VI. REPORTS

1. Chair's Report – **Chairman** Ben Frost had none.
2. Board of Selectmen – Clyde Carson said that the NH Legislature has approved a measure that would allow Towns to have some flexibility regarding the timing and the formatting of the upcoming 2021 Town Meetings and Town Elections, he will be meeting with Warner election officials on Wednesday to discuss the options. In addition, Carson also announced that since Janice Loz is leaving the Zoning Board of Adjustment (ZBA) to join the Land Use Office, the Board of Selectmen are looking for one or two people to serve as alternates on the ZBA.
3. Central New Hampshire Regional Planning Commission – Inman said that the Commission met on Dec. 17 where a draft document was presented regarding water management. He has asked Loz to send copies of the educational report to all Board members.
4. Economic Development Advisory Committee – Frost said he has no report but

that the **C**ommittee should be meeting in the near future and he hopes to attend.

VII. PUBLIC COMMENT

None.

VIII. ADJOURN

Without objection, Chairman Frost adjourned the meeting at 10:01 p.m. The Board will hold its hearing on the proposed zoning amendments on Jan. 18.