



TOWN OF WARNER

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Planning Board Minutes

Monday, April 3, 2023

Lower Town Meeting Hall

I. OPEN MEETING at 7:04 PM.

ROLL CALL:

Board Member	Present	Absent
David Bates	✓	
Andy Bodnarik (Vice Chair)	✓	
Karen Coyne (via Zoom)	✓	
Ben Frost (Chair)	✓	
James Gaffney	✓	Withdrew 8:30pm
Pat Goneau	✓	
Neil Nevins – Alternate	✓	
George Pellettieri - Alternate	✓	

In Attendance: Janice Loz – Land Use Administration,

Also present: Jody Sloane (Select Board), Bonnie Nester, Jeff Merritt, Joe Mendola, Joe Robinson, Christine Frost (Select Board)

Jody Sloane was a seated Select Board member but not formally appointed to the Planning Board, and is only here as an observer. Once the Select Board makes decisions on the representative for the Planning Board, there will be only one vacancy for an alternate.

Pertaining to the 56 Kearsarge Mountain Road site plan it was approved by the Planning Board several months ago, there is a request to approve a sign for that same site plan tonight. The Chair proposes this be added to the agenda tonight. No objects from the Board and therefore it is added to the agenda.

The Chair recommends that the first order of business is election of officers before the minutes are approved. There was no objections.

II. ANNUAL ELECTION OF OFFICERS

The Chair asked the Board if they wanted to do a secret ballot, they would have to do nominations first. Nominations do not require a second. There are two officers, Chair and Vice Chair, it is important to note that alternate members cannot serve, as officers. The Chair asked for nominations for Chair. Karen Coyne nominated Ben Frost for Chair. With no competition for the Chair position, they will not need a secret ballot. The Chair closed nominations for Chair and opened nominations for Vice Chair. Karen

Coyne nominated Andy Bodnarik for Vice Chair. The Chair closed nominations for Vice Chair and called for a vote on the slate of nominations. **Voice Vote Tally:** 6 – 0. Ben Frost was voted as Chair and Andy Bodnarik as Vice Chair.

III. APPROVAL OF MINUTES: January 30, February 6, and March 6, 2023

The Board reviewed the minutes of January 30, 2023. **Andy Bodnarik made a motion to accept the minutes of January 30, 2023 as amended. James Gaffney seconded the motion. Discussion:** None. **Voice Vote:** 6 – 0.

The Board reviewed the minutes of February 6, 2023. **James Gaffney made a motion to accept the minutes of February 6, 2023 as amended. Andy Bodnarik seconded the motion. Discussion:** None. **Voice Vote:** 6 – 0.

The Board reviewed the minutes of March 6, 2023. **Karen Coyne made a motion to accept the minutes of March 6, 2023 as amended. Andy Bodnarik seconded the motion. Discussion:** None. **Voice Vote:** 6 – 0. The Chair made a note there was not a quorum of the Board during the Old Warner Lane consultation, which was also noted in the minutes.

IV. NEW BUSINESS

A. Voluntary Merger Application

Applicant: Bonnie A. Nester

Owner: Bonnie A. Nester

Address: 50 Red Chimney Road

Parcels affected by this merger: Map 7, Lot 14-1 & Map 7, Lot 15

The Chair explained that if anyone holds a mortgage on a property, there will be a notice to each of the holders at the time of the submission of the application, the written consent of each mortgage holder shall be required as a condition of approval of the merger and shall be recorded within notice of the merger.

Bonnie Nester said her goal of the merger was to build a 24-by-24 garage on the property. It is important to note that the property line runs down her driveway. She owns both lots and wants to merge these to a combined total of 2.1 acres. The house is on Lot 15. The Chair asks the Board if they think there would be a violation of zoning ordinances if these two lots were merged. James clarified with the Chair about logistics of the deed, the lot numbers are included within the deed under her name. The Chair says if the mortgagee approves of the merger, it seems that the Board is okay with the merged land.

Karen said the merger application indicates consent is required from the mortgagee and asks if mortgagee consent has to happen first before the motion to approve is made. The Chair says that in order for the Board to approve this motion, it would be on the condition of mortgagee approval.

Andy Bodnarik made a motion to approve the merger. Karen Coyne seconded the motion. Discussion: Andy agrees with this plan of action, and it is important to get notice of approval from the mortgagee. **Voice Vote Tally:** 6 – 0. The motion was approved conditional on the approval by the mortgagee. The Chair told the owner to forward the approval to the Land Use office.

B. Conceptual Consultation

Applicant: Multiple Owners on Old Warner Lane
Owners: Multiple - Listed on the application
Agent: Jeffrey Merritt - Granite Engineering, LLC.
Address: Old Warner Lane
Map/Lot: Map 3, Lot 27
District: C-1
Description: Storage Facility Expansion - Determination of Use

The Chair recused himself due to a conflict of interest. One of the owners of the property is the Chairman of the Chair's Board of Directors.

Andy, who is the Vice Chair and assumed Chair responsibilities and summarized the previous conceptual consultation that was presented to the Board in February. This consultation contains new information.

Jeffrey Merritt, states that in the previous Board meeting in February there was discussion on the use of the property. Which is why they are back today. They are trying to understand past uses of this property and acknowledge that there are no records on how this use was administered in the past, regarding a special exception or a variance. How does our application move forward with this knowledge in terms of the current zoning ordinance. Jeff wonders if this site plan will pertain to using the Use Table number nine, "Personal and Consumer Services." The current Zoning Ordinances, and the Table of permitted uses, lacks a definition for self-storage.

The Board previously asked about how the land was identified in 2001. In between Board meetings, investigation was done to try and figure out if we could solve how self-storage was identified as a Use, in 2001. With the aid of the Janice, Land Use Administrator, we determined the Use Table did not differ from 2001 to present day. It was determined that back in 2001 the Use that was the closest to this business model was Use number nine, "Personal and Consumer Service" establishment. The best guess was that self-storage fit into a previous use and therefore that is why there is no variance or exception recorded.

Andy referenced a string of relevant emails dating back to May of 2016, and letters back in July, that a site plan was submitted, and Planning Board approved. Andy said he is unsure if a site plan exists along with Planning Board approval. With further research it was concluded that other than the site plan approved in 2016 that was all Andy could find to assist the Board with the Use Table designation. Andy said he would like a copy of the site plan from 2016 and further details on the site plan and an indication of what was actually approved. Andy said there may be an indication on the plan that would at least say it was approved which showed at least a determination must have been made on the use.

George Pellettieri asked if there is an approved septic system. Jeffrey responded by saying there is not an approved septic system, since there is no office or bathrooms.

Andy suggested to Janice they may want to talk to the town Attorney before proceeding. Although, the answer may be that it is up to the Board if they want to use that is being proposed. James said the proposed use being considered is retail and services. Janice stated that she looked back through the use table back to 2001 and there were no changes that would affect this use.

James recalls the Board having conversations about rentals. James notes that it might be important to look at similar cases before putting forward a statement, to avoid any potential conflicts that were discussed in the past.

George said a Notice of Decision in 2001 clearly identified the use as self-storage LLC, and if it is part of the application itself and the discussion it could be concluded that any approval of this application would be approving the use as well.

Andy mentions that this thought process is correct however there is no documentation or supporting evidence. James states the reference to renting also pertains to general merchandise and that is in the Use Table under Retail and Services.

James said there is a mention of renting in the Use Table under Retail and Services number 2 permitted in C1.

George suggested the 2001 plan mentions Peter Blakeman perhaps he has a copy of the approved plan.

Andy said if you need a television to rent you can rent instead of buy. Janice said you usually rent and take the item off site, this is a space to rent onsite. Andy said it is like a rental of a structure. Janice said it is like taking your garage and moving it down the street on their property.

Joe Mendola, via Zoom, noted that he and his wife purchased the facility in 2006. They have sold a large portion of the business to Joe Robinson and a couple of other. They still own a minority interest in the building. Over the past 20 years towns have called it warehousing to what self-storage really is today, which is a consumer orientated service.

Jeff Merritt mentioned they found an as-built plan that was submitted back in 2001, and Andy is referencing an as-built plan that was potentially submitted back in 2016. Restating that the only plan that they have access to is from 2001. Janice commented that as-built plans are not recorded at the Merrimack County Registry of Deeds. Janice said she will look for the as-built plan.

George asked if there was a reason why the Notice of Decision doesn't stand. It identifies the use, it identifies the property and was unanimously approved by the Board.

Andy said the record indicates what was actually built doesn't match the plan. David wondered if that had bearing on the question whether it was an acceptable use or not? Andy said no, but it begs the question if there was a new plan approved in 2016 then that issue is papered over. Andy said if they had the 2016 approval with a plan to go with it, then that plan would have approved what was as-built.

Jeff mentions the 2001 site plan, which he shared on Zoom, that was approved during phrase one and phrase two. Jeff said Janice has been very helpful, maybe it is worth another look. Jeff asked the Board to make a determination based on the assumption that the 2016 plan did not exist, that would be ideal. If the Board could make a determination subject to Janice digging through more files. Then if something is found that conflicts with the decision made tonight, then the condition can be made that the decision is null and void. The as-built plan will not have the scope of the use on it, that is just not what an as-built plan is.

Andy mentioned this was a conceptual consultation, therefore a decision is not usually made during a conceptual consultation. Andy asked Jeff to send a copy of the plan to Land Use so we may have a copy. Then wondered how they deal with the 2016 approval if there was one. He said there is also an issue of the distance between the buildings. The Fire Chief sent an email indicating they were concerned with the water supply and the sprinkler issues.

Jeff interjected they have that under control now, referencing Joe Robinson who can attest to that. The thing they need direction on and are really stuck on is they don't know if they can proceed to the Planning Board if this must go to the Zoning Board. They need determination on the use, first. Talking about fire suppression is putting the cart before the horse, if they don't even know if the use is administered.

Andy mentioned they can do a straw poll, but it will not be a legally binding because they are in the conceptual phase.

George mentioned there is no previous decision or approval by either the Planning Board or the Board of Selectmen understanding what the use is.

James mentioned if it was Retail and Services in the Use Table then it has to conform to the ordinance and the distances between buildings being 75 feet, etc.

Janice said if potentially no effort was made to determine classification in the Use Table and they were not referred to the Zoning Board for a special exception or a variance and it was permitted. Then it would become a permitted nonconforming use or a lot of record. Therefore, something that was allowed and nobody made an effort to see if it fit or not. The point is to fix this dilemma before going forward so they can make changes to a potentially nonconforming lot.

James is concerned that there is not a lot of detail to make a preliminary non-binding decision.

Karen read out loud the previous minutes from July 11, 2016 that the as-built plans were submitted during that meeting. It is important to note that at that time Ben Frost was on the Board but did not have any conflict of interest during that time frame.

Andy stated that they could take a poll on the decision, and after the meeting look for the as-built plan. He said if the Board is not comfortable with that, they can do more research.

Pat asked Andy about the applicant's inquiry about going to the Zoning Board. Would that be appropriate for him to go the Zoning Board. Andy said they can ask Zoning what information they may have on file. Janice said it is all in the Land Use property files, it's the same files. David asked if it is a shorter process to go to the ZBA and ask if they can do this. Andy said if we don't come up with a use decision, they go back to the Zoning Board.

Janice said if it is Personal and Consumer Services it is permitted in C1, so they do not need a Variance from the ZBA. Janice clarified the ZBA board does not do consultations, they just hear applications. An application for a Variance must be based on either a referral from the Planning Board or denial of a Building Permit or a referral from the Select Board.

Andy said the language of a nonconforming use is not clear, which we are throwing back to the Select Board to decide on.

AUDIO CUT OUT 1.15.16-1.16.30

The Board decides to postpone the recommendation for this consult, until there is more information. Andy states that Janice will recheck the files and see if there was anything that was missed. In hopes to find the drawing that would show that 2001 plan, furthermore hope to contact Peter Blakeman and attorney Jim Morris. This decision will be postponed till April 17, 2023 Board meeting.

C. Sign Application

Applicant: The Discerning Eye

Owners: Dan Reidy

Agent: Dan Reidy

Address: 56 Kearsarge Mountain Road

Map/Lot: Map 31, Lot 46-1

District: R-1

Description: Sign Application - as part of a previously submitted Site Plan

Dan Reidy, the site plan was discussed over a year ago originally to the Board. This is a home occupation, and it requires Planning Board's approval before it goes to the Select Board. Referring to an illustration provided by the applicant, they asked about the post size. Andy clarified with the

applicant that one sign that identifies the home and one sign to identify the business are allowed. The applicant understood that and mentioned that the sign will be on the left side of the driveway and no closer than 10 feet from the abutter or the driveway.

Karen Coyne made a motion to approve the sign application for The Discerning Eye at 56 Kearsarge Mountain Road with the condition of the sign, that the top of the sign be no greater than six feet from the ground. Andy Bodnarik seconded the motion. Discussion: None. Voice Vote Tally: 6 – 0.

Findings of Fact: The Board said they found the sign is in compliance with the Sign regulations in the Zoning Ordinance. Also, that the sign be no higher than six feet from the ground. **Andy made a motion to approve the finding of fact. David seconded the motion. Discussion: None. Voice Vote Tally: 6 – 0.**

V. UNFINISHED BUSINESS

A. Rules of Procedure (ROP) & Department of Regional Impact (DRI) Guidelines

The Rules and Procedures have been worked on for the past year. If changes were to apply it would have to be on the agenda for three meetings. One of the proposed changes is to only require it for one meeting. Nothing in state law depicts this change is not allowed. Tonight's meeting is the second reading of the rules and procedures. In hopes by the third meeting the change gets adopted. Two rules are under consideration, our last meeting discussed the elimination of the 7:00 PM start time and moving the public comment section of the agenda to the front of the agenda.

IV. COMMUNICATIONS

Janice mentioned that there was a monthly update due next week on the progress of the grant that the town got to work on the Housing Chapter of the Master Plan.

The grant was filed by the Select Board, and the Chair stated that it might be imperative to get some direction from the Select Board on what they want the Planning Board process to be in regard to the Master Plan.

V. REPORTS

There are a couple of Board committees that have Planning Board representation. The Agriculture Commission James is the Planning Board representation.

Economic Development Advisory Committee, James had been doing it previously, then Ben Frost took over, but the Chair mentions that he is open to someone else taking over this responsibility. Slating for a decision on who this would be on the work session of March 17.

Groundwater Protection Committee, is reported by Andy, stating an email that he received about the update of the status of this committee. With the ordinance map passing, Alice Chamberlin is going to try and schedule a debrief meeting with Central New Hampshire Regional Planning Commission, the date is pending. Andy mentioned a potential concern for the committee was a couple years after we tested this protection it might be important to see if there were things that we missed. There was also concern with the Conditional Use Permits going forward. The Chair proposed that it might be useful to set up a work schedule for the year of things that we know we need to get done. Like monitoring the Groundwater Protection Ordinances.

The Capital Improvements Program had its ups and downs with communication between departments and lack of information given to the Board. The CIP was presented to the Budget Committee in December, but further scheduling and details needs to be done. Part of that scheduling is if we want to appoint a committee to do it or have the Board take the lead.

UNAPPROVED – March 6, 2023

The Chair said on Regional Planning Commission, there are two seats available.

VI. PUBLIC COMMENT

No public comment.

IV. ADJOURN

Andy Bodnarik made a motion to adjourn the meeting. Meeting adjourned at 8:56 PM.

Respectfully submitted by,

Molly B. Loz

Recording Secretary

Town of Warner