

Town of Warner
Zoning Board of Adjustment



APPROVED Meeting MINUTES

February 13, 2019

7:00 PM Warner Town Hall Lower Level

1. OPEN MEETING and ROLL CALL

Sam Bower
Beverley Howe
Harry Seidel (alternate)

Janice Loz: (Chair)
Barbara Marty
Elizabeth Labbe (alternate)

Howard Kirchner (Vice Chair)

2. APPROVAL OF MINUTES

January 9, 2019

Motion to approve as amended by Barb Marty.
Second by **Beverley Howe**.

Approved 5-0

3. NEW BUSINESS:

VARIANCE APPLICATION – Case: ZBA 2019-01

APPLICANT: Amy Corbett

PROPERTY OWNER: Eaton W.
Tarbell

MAP 7 LOT 6 ZONING DISTRICT: R-2

PROPERTY LOCATION: 32 ROUTE 103 WEST

DESCRIPTION: Request for Variance to the terms of: Article XII , Section B.

3 of the Zoning Ordinance of Warner for size of the new sign (recently installed), at Braeside Apartments, which is larger than the previous sign.

Motion to table the application until after the special exception application is heard, by **Beverley Howe**.

Second by **Howard Kirchner**.

Approved 5-0

Applicant did not attend the meeting.

SPECIAL EXCEPTION APPLICATION – Case: ZBA 2019-02

APPLICANT: Peter E. Smith

PROPERTY OWNER: Peter E. Smith and Denise Smith

MAP 9, LOT 11 ZONING DISTRICT: OC-1.

PROPERTY LOCATION: 89 Mink Hill Lane

DESCRIPTION: Request for Special Exception to the terms of: Warner Zoning Ordinance, Table I USE REGULATIONS , Retail and Services #19.

- Open Board Meeting
- The Chair Introduces the application

The Planning Board minutes are attached. **Peter Smith** appeared before the Planning board in January. The Planning Board suggested that Mr. Smith apply for a Special Exception with the Zoning Board.

The board is continuing the discussion of reviewing the application for a special exception for Mr. Peter Smith.

Sam Bower wanted to be sure that in the minutes that 19 is the appropriate number as there is a 19a.

Barbara Marty: Are there plans to include camping groups?

Peter Smith: I don't plan on camping groups.

Howard Kirchner: Under OC-1 is the only one listed as special exception, so you would only apply to 19 because 19a requires a variance.

Janice Loz: For the record, the applicant said he is not opposed to camping groups.

Janice Loz: Would you say that it is indoors and outdoors?

Peter Smith: Yes. I figured that when I did the auctions, I was allowed 26 functions per year. I did the same thing, 14 outside, and maybe 12 inside.

Janice Loz: Is that something you want to pin down now?

Barbara Marty : This is Oc-1, so if this in indoor, and excluding camping groups.

Janice Loz: He has that checked off. Does he need a special exception and a variance? A special exception for the outdoor, and a variance for the indoor.

Elizabeth Labbe: My question is if he is asking for a special exception on 19, do we consider 19A? Is that the question you are asking?

Janice Loz: He said that he is open to including camping groups. I don't understand why they were separated indoor and outdoor.

Beverley Howe: The planning board says that 19 and 19A are outdoor. It is a tent that is added on to the building.

Peter Smith: The reason we did not use 19A is because it is not listed as special exception, and we are not asking for that.

Sam Bower: As far as I can tell, other amusement and recreation services, outdoors. In Oc-1, and that is excluding camp groups, isn't that an allowed use? Also in OC-1, needs a variance.

Harry Seidel: He is here for a special exception.

Barbara Marty :But the description of how the property will be used includes indoor function.

Sam Bower: We could just say that we will need a variance application form.

There is a breakdown of 14 outdoor and 12 indoors.

There was already a variance given, historically for event indoors including auctions.

Janice Loz: But that was under retail and services II.

Howard Kirchner:So we would require a new variance.

Harry Seidel: The Planning Board did not feel that way.

Howard Kirchner:There was a question if it was grandfathered.

Barbara Marty:It was abandoned because it had not be used for so many years.
The Planning Board suggested that he go for a new application.

Sam Bower:That was a variance for a different section of the ordinance.

Janice Loz: For the use table.

I would say that this application is correct in part, events outdoor, including camping.
What we will have to determine is if he needs a variance for #20.

Janice Loz: We may see it differently. You will need a special exception.
This is a new part of the regulation table. But you may also need a variance.

Howard Kirchner:When we interpret 19 as indoor but also outdoor.
Not everything is going on outside especially if you have a barn there.
Is it within our scope to say that 19 includes indoor and outdoor.

Janice Loz: You have to consider that camping groups will have a tent.

Beverley Howe:But he will not have camping groups.

Janice Loz: Well you could argue that camping groups could have a tent.

Peter Smith: It does not say "not indoor"

Beverley Howe:If he only has 60 people, as I read, then it is indoors. Not every reception will be 150 people.

Howard Kirchner:He would have the option to use outdoor.

Janice Loz: Why was it separated? One says indoor and one says outdoor.

Peter Smith: That needs a variance.

Howard Kirchner: Can we deny the application and ask him to come back?

Sam Bower:I would agree with **Janice Loz**. It seems like it needs to be done in two parts one way or another. If there are events indoor and outdoor, and in the zoning ordinance, and in the zoning ordinance you need a spec exception for outdoor, and variance for outdoor.
We have the application for 19 completed.

Janice Loz: He does need a special exception at least in part.

Barbara Marty: Can we accept the application as complete, as written?
It says indoor/outdoor. The special exception would only be for outdoor. I don't want there to be a problem later.

Peter Smith: I wish someone had picked up on it, so I did not have to come down here twice.

Janice Loz: Since he went to the Planning Board and got direction of what to complete, and he did it in good faith, we need to be careful that we don't lump 19 and 20 together. We can tighten it down with a motion of what we will and will not accept.

Sam Bower: We can make a motion to accept or deny, and that the application speaks strictly to 19. And only restriction be placed on outdoor function.

Janice Loz: And we could recommend he seek a variance.

Peter Smith: Without the barn, I would not be here. It is the focal point of the property. You need to house more people than the barn can hold.

Janice Loz: If we accept the application, and start the process, because he is not supposed to be talking during deliberations. We can combine the two. To simplify for Mr. Smith, since camping groups are not something he plans to do, he could bundle 19a and 20 in the same application. But he needs to go for a variance anyway.

Peter Smith: Let's do that.

Sam Bower: That could make sense. If he submitted a variance application for 19a and 20 of the Use Table, that is if the applicant wanted to do one application.

Janice Loz: He said he was not excluding special exception. Remember that special exception has a lower tolerance.

Sam Bower: We are supposed to be talking as a board right now.
Deny the application as written for special exception because it mentions indoor.
And say that is can be rewritten for the special exception because if he is coming back with two new applications anyway. Then we can talk to the applicant more openly.

Harry Seidel: An application that is denied can have other implications. You cannot simply reapply. I don't think we need to need to deny.

Howard Kirchner: You can be here now to work on the Special Exception, and then come back for a variance.

Sam Bower : **MOTION** to accept the application understanding that the special exception is specifically permitted to 19 in the use table for outdoor function.
If the applicant wishes to address indoor functions, that would require a variance of the use table.

Barbara Marty: Second

Approved: 5-0

Motion to accept the application for a special exception is **APPROVED** given conditions laid out in the motion.

Open the public hearing.

Janice Loz: Do you want to ask the applicant if he wants to come back at another time.

Sam Bower: It is up to the applicant.
As long as there is an understanding that we are only talking about the outdoor portion for now.
If you want to pursue the indoor function, that will require a variance.

Janice Loz: Usually we would have you read the application, but we are going to have to separate out the indoor functions.

Howard Kirchner: Why does he have to stick to indoor?
Maybe half of the time he will be outdoor. I don't think you can separate the two.

Peter Smith: You tell me.

Janice Loz: If he had a special exception and variance, we would have to hear one before the other.

Sam Bower: Let's go through the application.

Janice Loz: If you could go through the ABCD question and how you responded.

Peter Smith: (reading from the application)

A. The Use request is identified in the Zoning Ordinance as one which may be approved by the Zoning Board in the district for which the application is made:
Answer: YES.

The Use falls under number 19- Other amusement and creation service, event, venue and function including camping groups.
OC-1 S Special Exception.

B. The requested use is essential or desirable to the public convenience or welfare:
Answer: YES.

The use of this property as a place for a wedding, birthdays, anniversaries, and other vents is desirable to the public convenience.
There are not too many places in the area that can accommodate these events and they are needed.
We are always getting asked if we would rent property.
The demand is there.

C. The requested use will not impair the integrity or character of the district or adjoining district, nor be detrimental to the health, morals, and welfare:
Answer: YES.

The character of the property is admired, if anything, with the historical barn and Mink Hills background.
The use of property for such events will not be detrimental to the health, morals, or welfare.

The auctions held were a prime example of people getting together.

- D. OC-1 and OR-1 districts only: Use of structure must conform to road access and availability of all services to that parcel at the time the Special Exception is requested:
Answer: YES.

The road conforms to access and availability to all services.

When we did auctions and when the tent company as here, the driveway and parking was upgraded for those uses.

Janice Loz: What time of years are you planning to have the events?

Peter Smith: Every month except November. Beyond the outdoor events, I had a tent company for a long time. Maybe 14 from May to October, maybe 2 per month.
Similar to what I did for auctions, then I figured the barn is pretty nice and holds 50-60 people. The town had approved 26 events.

Janice Loz: Can the barn be closed?

Peter Smith: It is historical. It used to be in the minks. I moved it. When I sold my business, I moved everything up there.

Janice Loz: Are you going to do the tent business as well?

Peter Smith: You have to put out a tent to accommodate excess people.
If I am going to buy a tent, I will use it there.
Why not let someone else use it on their property for a fee?

Janice Loz: Would 150 people fit?

Harry Seidel: I did a site visit. This is a fairly remote property. There is a house, a beautiful barn, and views of the Mink Hills. From the property to the south, it is open, looks like pasture.
It is really nice.

Janice Loz: How much parking can you accommodate?

Peter Smith: Rachel Martin got married there and had 200 guests. They got married in the field.
Everyone parks where you cannot see them.

Janice Loz: So you can fit as many cars as you want. There is no overflow?

Peter Smith: No overflow to the street.

Howard Kirchner: And you just rent, and everything else is taken care of by the person renting?

Peter Smith: Yes. And we provide advice.

Janice Loz: When the weather is pleasant, you can use the barn to either hold a wedding, or supplement.

Peter Smith: You can get married in the tent, and the barn is attached.

Sam Bower: If there are facilities inside, and food, but the ceremony and the music is outside, it is more an outside event.

Peter Smith: They can put a temporary floor outside.
If it is a large crowd, they are required to get porta-potty.
I don't allow anyone up there unless people had liability insurance.

When we had auctions, I had the display in the barn, people would bring the stuff up to the edge of the stage and it worked out well that way.

Howard Kirchner: I think it meets the criteria.

Janice Loz: I am trying to understand what is outdoor and what is indoor. I am trying to figure out why he needs a variance for other parts.

Howard Kirchner: We can get some of it streamlined now.

Harry Seidel: The way the application is presented, we have to assume that everything will happen outdoors.

Janice Loz: Except that you said you would do it all year.

Bower: That was amended when the application was accepted.
If the Special Exception is to be accepted, if the dancing, food, is served outside, then that is all an outdoor event falling under a Special Exception.

If people bring their own porta-potty, then that is all outdoor.
I don't know if we want to talk to the abutters, the number of people or cars.
Obviously there is some kind of maximum capacity, whatever would seem reasonable there. Maybe 250 people?
I don't know if we want to get that detailed.

Janice Loz: That is more a Planning Board issue.

Beverley Howe: In winter there is not much happening.

Sam Bower: Although you were not looking at the camping clause.
I think it makes sense to have a camping area after a wedding.
I don't know if there are rules about that, where a tent needs to be setup.

Barbara Marty : It is not just the applicant, this goes with the property.
So the next person to own the property could have 26 events and they could have them every weekend for 6 months.

Sam Bower: We could accept the Special Exception with conditions in the motion.

Barbara Marty: I don't know how we will tease this apart. If we are talking about a number of indoor and outdoor events, how do you make a motion that is indoor or outdoor only?

Janice Loz: It sounds as if the board is saying that if there are outdoor events, we need to look at it seasonally.

Sam Bower: If we are going to say 14 events a week, no more than 2 a week.

Janice Loz: : To separate the outdoor form the indoor, from may through October, you do 14 events outdoors.

And then take the indoor piece and apply for a variance that would be October to may.

Peter Smith: What if I just want to have a party indoor on a Friday in August?

Beverley Howe: I think we are making something that is so simple very complicated.

Peter Smith: Have a 90 year old that wants to have a birthday party, whether this happens or not, we are having a birthday party.

Howard Kirchner: Why can't we just go with the number of events per year – 14 events per year.

Sam Bower: I would say no more than 2 per week.

Barbara Marty : We should have the abutters have a say before we deliberate.

Janice Loz: We are still in the process of figuring out what he wants to do.

Sam Bower: I think it would be good to ask if the abutters have any comments.

Harry Seidel: My question is, if there are 14 outdoor events, there will be a band playing outdoors, or a DJ, people having a good time. Is that a sound a light and sound issue that might be a problem or is absorbed by the forest?

Peter Smith: It is very contained, and all goes toward southwest.
I have never had the police department there saying it was too loud.

Harry Seidel: I have had this before across a lake, and the sound traveled across the lake.

Also, there is no exception to the town rules, in terms of noise, all of that would still apply.

Janice Loz: Does the abutter have anything to contribute?

Greg Heath -97 mink hill lane. I have some questions, and my wife had some questions.
My wife question is that there are a number of places on the road that it is tight for cars.

Janice Loz: Have you had problems with that when there were auctions?

Peter Smith: The road is tight at Peter Sabin, It is a town-maintained portion.
One thing about weddings is that people slowly filter in and slowly filter out.

Greg Heath: We wanted to know about the septic.

Peter Smith: There will be porto -potties.

Greg Heath's wife is worried about noise after 11pm.

Peter Smith: That will be up to the wedding coordinator to calm things down by a certain time.

Howard Kirchner: These are planning board responsibilities.

Greg Heath: If there is going to be a bar there, how is that handled?
People at weddings can get rowdy.

Peter Smith: That is the renter's deal. They bring their own bar tender.

Greg Heath: Would they have to have at least one police officer?

Peter Smith: No they would not.

Greg Heath: How does that work? Do you need a special permit to have a bar?

Peter Smith: If he was serving beer.

Janice Loz: I don't know if you need to have a police officer if there are a certain number of cars. I think I came across that at some point.

Greg Heath: She talked about the environment impact. Would there be any? Is septic a problem? Can parking on the road that overflows not happen? I guess what we are wondering, can all of these things be addressed by the Zoning Board, so that it says, "no overflow parking on the road."
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Janice Loz: That could be something that we word into conditions.

Sam Bower: That is why I was wondering about putting the condition of # of events in a year/week. Then **Peter Smith** would get the number he wants.

Peter Smith: I am flexible about the number of events.

Sam Bower: And then the number of occupants that would fit in there. Then we could say at the end, Overflow parking onto the town road would not be permitted.

Janice Loz: But as **Barbara Marty** said, this goes with the land and even though **Peter Smith** is amenable to that, we want to be sure that a future owners would have the same conditions.

Beverley Howe: When we have events in the Warner Town Hall, we need to have a police office because it is a town event.

Howard Kirchner: I can see that your house is up that road, so anyone leaving there the people are going in the opposite direction. There is not very far to go in the opposite direction.

Greg Heath: That is why my wife is concerned.

Peter Smith: If you come up on Saturday, I will show you how we park the car. You cannot even see a car.

Janice Loz: There is a noise ordinance in town. The selectman's office can tell you what it is. Does the public have any comments?

Barbara Marty : Camp fires and fireworks?

Peter Smith: I have not thought about that. I have a fire pit but we are not going to do that. I would have to think about that.

Barbara Marty : Fireworks?

Sam Bower: Whatever is legal.

Janice Loz: But it is legal.

Sam Bower: It is following the town rules when it comes to that.

Peter Smith: I love the Minks. I am not going to say that somebody would not want to do it in the right conditions.

Barbara Marty : I think we should mention it in conditions.

Janice Loz: I don't know that we legally can. It is a legal thing that people in NH can participate in.

Beverley Howe: Where I live, it goes on all summer.

Barbara Marty : Who is responsible for you leasing you property – who is responsible for the people that rent?

Peter Smith: That is part of the liability that people enter into when they come up there.

Barbara Marty : Do you make that a condition of leasing the property?

Peter Smith -Yes. If people can ask and we can discuss, then we can work something out.

Barbara Marty : I have been to weddings where people want to have a fire.

Janice Loz: I don't think that as a zoning board that we can regulate. It might be a good thing to check.

Barbara Marty : I will look into that.

Howard Kirchner: You keep talking about down the road.
Isn't the new town ordinance say that after two years without activity then it does not carry on?

Barbara Marty : He could sell it to someone who buys it right away, then they can jump right in using it.

Howard Kirchner - If you stopped the activity within 2 years of when you sell, then that would put a stop to it. This is a new thing in the town.

Janice Loz: Does anyone see a usefulness in a site walk before we make decisions.

Barbara Marty and **Janice Loz:** would like to see the parking system.

Howard Kirchner and **Harry Seidel** are both familiar with the property.

Harry Seidel: I thought we were supposed to go. Before you can have a fire pit, you have to call the fire chief and get a permit.

Peter Smith: I get a seasonal one.

Barbara Marty : You would be onsite for every event?

Howard Kirchner:You will have to return for #20 for a variance.

Janice Loz: It might work out fine if he does a site walk.

Harry Seidel: We would do that site walk between now and the next scheduled meeting?

Janice Loz: Even if there are only a couple of us on the site walk.

Janice Loz: **Motion** to do a site walk of **Peter Smith's** property, 89 Mink Hill Lane.

Barbara Marty Second.

Approved, 5-0

How many people will go on the site walk?

Sam Bower, Howard Kirchner, Elizabeth Labbe, Janice Loz, Barbara Marty . confirmed they would attend.

Next Meeting is March 13.

Saturday March 2 for the SITE WALK.
10am.

Continue the public hearing at the site walk, and continued again at the March meeting.

4. COMMUNICATIONS:

Janice Loz: **Howard Kirchner** and **Sam Bower** need to talk to Mary about their appointments. There was an email circulated regarding reappointments.

Janice Loz: Will respond that **Howard Kirchner** and **Sam Bower** would like to be reappointed to the board.

Then it goes to the Board of Selectmen, and they decide if they would like to interview.

Then you take another oath, upon notification of reappointment.

You will need to do that before the April meeting so that you can vote at our annual meeting.

Janice Loz: Any contributions or comments about the town website?

Harry Seidel: I looked it and it looks fine. The website itself is similar to a lot of other towns. I did an informal survey. I like the menu on the left side. Some have banners on the top, some have them on the side.

Janice Loz: We were specifically wondering about the ZBA page. They did make changes so that you can see decisions. All names are in the town report.

Harry Seidel: How about the names of the ZBA being posted on the site.

Janice Loz: They are listed but you have to go to a different page to see them.

Howard Kirchner: The Braeside case.

Elizabeth Labbe– I drove by just before the meeting, and the lights are very bright.

Sam Bower: What do we do?

Barbara Marty : They are in violation because they did not get a permit for the sign, and they were here for a Variance, but they did not attend.

Janice Loz: They would have to resubmit, and abutters reassigned.
The BOS will contact them and tell them that they are in violation of the regulations of the town.

New RSA books were distributed.

Meeting adjourned at 8:45pm.