

Town of Warner  
*Zoning Board of Adjustment*

**Meeting Minutes APPROVED**

**April 10, 2019**

7:00 PM Warner Town Hall Lower Level



**1. OPEN MEETING and ROLL CALL**

Present: Janice Loz (Chair)      Howard Kirchner (Vice-Chair)      Barbara Marty  
             Sam Bower                      Elizabeth Labbe (Alternate)

Absent: Beverley Howe, Harry Seidel (Alternate)

**Janice Loz:** In Beverley's absence, Elizabeth Labbe is moved to a voting member of the board. This is our annual meeting where we will elect new officers of the Zoning Board.

**2. APPROVAL OF MINUTES:**

Motion by **Barbara Marty** to accept the minutes of **March 13, 2019** as amended, second by **Sam Bower**.  
**Approved 5-0**

**Howard Kirchner:** Regarding the minutes, Howard referred to the Minutes of March 13, 2019, page 15, where Beverley asked when Harry would be moved up from an Alternate position. It should be noted that the next alternate in turn would move into the voting membership. That is a decision ultimately of the Board of Selectmen.

**Sam Bower:** It would be clearer for anyone reading this in the future, to say, "moving up the next person." Not moving any one person because that is not how it works.

**3. NEW BUSINESS:**

Voting on Membership

VOTING FOR **CHAIR**.

Barbara Marty nominates **Janice Loz** as Chair. Second by Sam Bower.  
**Approved, 4-0 (Janice abstained)**

VOTING FOR **VICE-CHAIR**

**Howard** is willing to continue as Vice-chair but has no interest in being the Chair so he feels he may be keeping someone else from learning how to be Chair.

**Sam** is not interested in either positions at this point, but in a year may be interested in the Vice Chair position.

**Janice Loz** nominates **Howard Kirchner** as Vice Chair. Second by Barbara Marty.  
**Approved, 4-0 (Howard abstained)**

Janice's intention as Chair is that anyone on the board will be able to step in as the Chair. If people can make motions and write decisions, then people are better prepared for the position.

#### 4. OLD BUSINESS:

**Review Decisions for Peter Smith Cases**, CASE #2019-02, CASE #2019-03, and CASE #2019-04

**Janice** amended the 2019-02 to add, "Outdoor events will have no more than 250 people per event including band and catering staff."

**Motion by Howard Kirchner to approve** the amendment to the decision for case 2019-02 which was decided on April 4, 2019. Second by **Barbara Marty. Approved 5-0**

#### 5. COMMUNICATIONS:

**Janice Loz** attended the Planning Board meeting where a new applicant is interested in having weddings on her land. In a previous board, there was a member of the Zoning Board who had several ex parte communications, and this is a good time to be reminded about these guidelines. At the time, the person told the Land Use Secretary that they had many communications about the case with abutters from the Pumpkin Blossom Farm case, but was unaware that it was not OK.

**Howard Kirchner:** It is a touchy situation because we are appointed by elected officials, and we are responsible to the voting populous. My feeling is that you can talk in a casual way, but you cannot say: "what about this, and what about this."

**Janice Loz:** I think there are times when you will not make any friends being on the Zoning Board. There are times when the case is a certain thing, and the law says a certain thing, and you have to uphold the law regardless of what people want. We are obligated to do what we signed up to do. That is why the term "quasi-judicial" is used. If your neighbors think that you may have their back on certain issues, a member will quickly learn that may not be the case. If you have prejudged a case or are in conversation with neighbors or working to mobilize an effort against a case you will most certainly have to recuse yourself.

**Howard Kirchner:** But people are most likely to speak to family members. It is a community issue.

**Janice Loz:** But if someone approaches you and has a strong opinion, what we are supposed to do is to resist commenting on topics or applications before the board.

**Elizabeth Labbe:** Repeatedly people told me about the DragonFly case. I had no idea what was going on. I just knew I was not supposed to say anything.

**Howard Kirchner:** Anyone can write to the Land Use office and the communication gets to the board members. I might say something to my neighbor that I don't see how this will go through, but it does not mean I have my mind made up. People have an opinion, but I don't think it is a sin if I say something about it, but it is communication with the public. I don't think it is fair that we talk about it.

**Janice Loz:** After it is over, you can talk about it.

**Howard Kirchner:** I think it is important to invite people to the meetings. We saw that in action with the gun range.

**Elizabeth Labbe:** I was noticing, sometimes, that we have the ZBA rules (Rules of Procedure) on the website and it seems that we don't really know them. How relevant are they?

**Sam Bower:** I think that is what Janice was alluding to is that the more we can all be informed about the procedures, the better we will be as a board. We should be following those procedures. Sometimes we are moving and rolling, and then someone asks if we should make a motion. We should all try to improve.

**Janice Loz:** If there is anything you think we should work on?

**Sam Bower:** I think we should all be encouraged to take a time out and ask why we did something. We can always rewind and clean up something. The worst thing is if we make a decision and we came to it improperly.

**Elizabeth Labbe:** The guidelines say you need to follow the rules of procedure but you have to roll with it too. Our ruling is the ruling. So as long as we are in good faith with it, then we can be fluid.

**Janice Loz:** In the rules of procedure it shows how to open the meeting, say the case, open the public meeting, then the applicant speaks. Prior to my being Chair, we never did it by the rules of procedure, but we do now.

**Howard Kirchner:** We can amend the rules, but it takes three meetings.

**Janice Loz:** I worked on writing information on what you need to do to recuse yourself. Because I found it to be unclear. We can always change the document if something is not working.

**Barbara Marty:** When we accept an application, we accept it for completeness, not acceptance. If we see an error, does it have to come up before the application is accepted? Or as the testimony comes up, we see that it should be for something else, at that point can we say that the applicant applied for the wrong thing?

**Janice Loz:** If you could find more information, that would be great. If we find that someone applied for the wrong thing, can we just change it? But then the public needs to be notified if there is a change in the request. Like in the last meeting when I made the amendment to the motion, to make it 14 events instead of 12.

**Elizabeth Labbe:** I think we were covered.

**Howard Kirchner:** I think you raised a good point about going to a higher number. I think it was fair that we went to a greater number of events.

**Sam Bower:** Since we are on that subject, I was thinking back on that. I felt like, with the applicant being very accepting, and Barb's very obvious concerns, should we have backed off from the happy medium? How would it be looked on by future boards? They passed it but they made it more strict to make sure that we don't reach too far.

**Barbara Marty:** I think we will have plenty of opportunities in the future.

**Sam Bower:** There was something about a site plan approval.

**Howard Kirchner:** It was unofficially said that he may need a site plan review.

**Barbara Marty:** At the last meeting Planning Board meeting during the (Pumpkin Hill) consultation they were told to go to the Zoning Board, and then come back. I am surprised that it is not the same weight.

**Diane (Land Use secretary):** Peter came before the Planning Board on January and was not asked to return to the Planning Board. On January 7, 2019, The Planning Board recommended that Peter go to the Zoning Board, but was not told he needed to return for a Site Plan Review after Zoning Board approval of the use.

**Janice Loz:** It is because he already had auctions there, but it is a completely different use. This is now his family room that is changing into a public space. I will write something for Ben Frost and follow up. Is there anything else we need to work with on the planning board? The Use Table?

**Sam Bower:** About the specific application and about procedures, we put some things on the last decision, “pay attention to town roads, things about noise.” Did we put anything in there that said what is the consequence if he does any of those things?

As a board, what are we legally allowed to put in there? If we can put in restrictions added, where does that stop? It would actually help with enforcement, if we could say, “failure to meet these restrictions will result in a fine of \$5000.” Then the selectmen can go and follow up.

**Barbara Marty:** Some towns have a zoning board enforcement officer.

**Janice Loz:** Some municipalities have enforcement officers; we do not. I did look up conditions before the meeting. I could not find anything definitive. Our conditions did not look outrageous, or pin him down to something he could not do.

**Sam:** Everyone was focused on the spirit of the district.

**Janice Loz:** It brings it back to the spirit of the ordinance. I’ve always wondered about conditions and how they would be enforced and what kind of leverage we have.

**Elizabeth Labbe:** I have registered for the upcoming conference following the link sent by the Land Use office. I think at the end, in the big room, you can ask questions, at the State Meeting, unless you choose one of the other workshops.

**Howard Kirchner:** When does the enrollment date end?

**Elizabeth Labbe:** June 2 is the date of the event. I signed up for the first one and second one, there was one about Economic development and the ZBA afterwards.

**Barbara Marty :** You can also get a handout at the back of the room.

Motion to adjourn made by Barb, seconded by Elizabeth. **Motion passed 5 – 0.**

**Meeting ADJOURNED at 8:37 P.M.**

*\*ZBA meetings will end at 10:00 P.M. Items remaining on the agenda will be heard first at the next scheduled monthly meeting.  
All interested parties are invited to attend.*