



TOWN OF WARNER

Zoning Board of Adjustment **Town Hall - Lower Meeting Room @ 7:00 PM**

Minutes of August 11, 2021

1. The Chair opened the ZBA meeting on August 11, 2021 at 7:00 pm.

A. ROLL CALL

Present: Barbara Marty (Chair), Howard Kirchner (Vice-Chair), Sam Bower, Beverley Howe, Harry Seidel, Elizabeth Labbe (Alternate), Lucinda McQueen (Alternate)

Also: Janice Loz, Land Use Secretary

2. Approval of Minutes: July 14, 2021

Page 2: third paragraph, Howard said there was not enough information noted. The second sentence should read on section roman numeral II, number 8, in regard to the Rules of Procedure. That is where the second sentence comes in not the second sentence on the page. Howard continued to say in that same paragraph he is misquoted. It says that Howard felt that if the Zoning Board handpicked members it could sway opinion in a certain direction. He said he had never said that. It may have been discussed, but, he never said it. He remembers stating that in the past the ZBA hadn't picked members. Janice asked Howard how he wanted to phrase that section. Howard would like it to be stricken from the minutes. The Chair said there is a recording to reference. She remembers a discussion about this subject. The Chair asked Janice to forward the recording to her, she will listen to it for clarity.

The Chair stated the minutes will not be approved at this meeting. She will listen to the recording to correct the statement and the board will review these minutes at the next meeting.

3. NEW BUSINESS

Application for a Variance

Applicant: (Owners) Paula J. Brown, Marc A. Violette & Daniel P. Violette

Agent: Michael W. Brown

Address: 302 Kearsarge Mountain Road, Warner, NH

Map/Lot: Map 14, Lot 36-1

District: R-2

Description: Separate to original lots and original deeds of 1983 and 1984. Variance to the terms of Article VI.C.1.a. of the Warner Zoning Ordinance (frontage requirements and buildable area in an R-2 district).

The Chair said the board will review the application for completeness. Then once we accept, reject, or continue the application, we will continue to discuss the application as a board. Then

UNAPPROVED - Minutes of August 11, 2021

the public hearing will be open, and the board will ask questions. Then the meeting will be opened to the public, first the abutters, then to everyone else. After everyone has had a chance to speak, we will close the public hearing and open the board meeting. The board will then discuss the application.

Sam stated that he has Lucinda's oath of office to administer. Lucinda McQueen is the new Alternate appointed to the board by the Board of Selectmen (BOS). Sam is a ZBA member and a Selectmen. Sam read the oath to Lucinda, she rose her hand and read her portion of the oath. Sam and Lucinda both signed the oath and forwarded the form to Janice for distribution.

The Chair asked board members if anyone had a conflict of interest and if they need to recuse themselves. No board member responded.

The Chair asked if the fees were paid for the application? Janice said, yes, and added that all the abutters had been noticed.

Harry said the sheet he has and the on-line copy, explains there are five conditions that must be met for a Variance to be granted. He only sees answers to four. The fifth condition hasn't even been touched. Howard agreed. For the provision of unnecessary hardship there is nothing stated. It is incomplete. The Chair asked if they feel it rises to the level of continuing this until they complete the application? Harry said, yes, I do.

Janice asked the Chair if she could make a suggestion. Could the board potentially ask the applicant to respond to number five as part of their verbal statement on the record, in the meeting. Howard said it would seem possible, if they are prepared to do that. Mark Violette said they are prepared to do that. The Chair asked if Harry was okay with that. He was not certain he was okay with it. Harry said this is a public record that was noticed. He asked if this application was not given to all the abutters. The Chair said they just get noticed that there is a meeting. She said they can get a copy of it, and it is online. Harry said if the board wants to go along with this it is okay. The Chair said they will be voting on this issue.

Howard thought the tax map with a dotted line was not enough. He stated they are dealing with a subdivision. A subdivision should have a surveyed plan to be submitted to the board. He does not find the attached adequate. The Chair said we should bring this up when we discuss the application, because she does not feel it is specific enough as to what the board needs from applicants. We do say it needs to be a plan with footage noted. But, we don't say it needs to be a surveyor's map. Janice said the requirement is not like the Planning Board. Sometimes we just get drawings, depending on the applicant. Howard said it is going to be a subdivision and that separate lot is going to need a separate plan. The Chair said if it gets past this board and goes to the Planning Board it is going to have to be a surveyed lot. They will require a survey. Howard said it is very unusual what we are being asked to do. The Chair agreed.

Howard said the applicant switched between Iron Kettle Road and Iron Kelly Road on the application. He confirmed that it is Iron Kettle Road.

Janice noted in the application checklist asks for a clear indication of where the site is located and what is the purposed drawing to scale. It does not indicate the need for a site plan. She said that may be something the board wants to change. The Chair said when we get an

UNAPPROVED - Minutes of August 11, 2021

application relative to a subdivision we should be getting something better. The Chair said that is a discussion for us going forward.

The Chair called for a motion on accepting or rejecting the application. Sam confirmed with the applicant they are aware what the board was talking about in terms of the conditions. Specifically, number 5. Sam said if they are comfortable providing an answer to number 5, then he is comfortable. He said it may be a benefit to take the application and work on it. But, if not, he was comfortable accepting it. Michael Brown said they will be addressing the conditions of number 5 as part of their presentation. Sam said to Harry's point the applicant's comments will be in the minutes. ***Motion: Sam said if they are comfortable then he would make a motion to accept the application.***

Harry said his major concern is the Zoning Board maintains getting quality information. He doesn't want a precedence set that you can come to the Zoning Board without these major questions answered. Hardship is the most important one, of all, and it is not even answered. The precedence would be set that maybe we don't require all the answers to be filled out on the application. This is serious business and a very difficult case.

Sam noted this is the discussion portion of the motion. Sam said he could agree with what Harry said. The Chair noted a second on the motion was needed. Howard made a point of order, if this is approved like this to accept it and then we have a discussion. If our discussion leads us to a point where we decide it isn't a good idea to continue with this application. Howard said he had things to say about the application and didn't know when was the time to say them. It was about the procedure between the Planning Board and the Zoning Board. The Chair redirected the members to deal with the motion on the floor. ***Howard seconded the motion.***

The Chair asked members for discussion on the application. The Chair said this isn't the first application they have received with poor information. She said they have let a lot of them slide that way. Because we do not have an opportunity to discuss them before they come before the board. Harry said he was surprised the application even got this far. The Chair said the applications come to us and we do not comment on them until we get to this point. Harry said doesn't Janice look at them. Janice said she does and she missed that section and she apologized to Harry for the oversight. Janice said we have made an effort in the past to work with applicants to help them through the process. It can be an awkward and difficult process.

Howard wanted a real map with the application. If we get down the road with this case and we see a land-locked piece of property with zero frontage. The access road isn't even on the property. That may be a big sticking point for the Planning Board. The Planning Board could come back and say, well you could draw that line anywhere between these two lots. This is a subdivision. Going back to the original two lots is very unprecedented; I have never seen that happen.

The Chair said this was never two lots. This was a lot line adjustment. Howard said after the piece of property was purchased. The Chair said lot 36 was purchased and the lot line was adjusted. This small lot never existed independently. Janice said she thought they were getting into the weeds here; this is information that is tease out during hearing process.

Howard said, suppose the Planning Board comes back and says we don't like having a Right-of-Way that is not on the property. The Chair said that would be their discussion to have.

UNAPPROVED - Minutes of August 11, 2021

Howard said say we approve this and then there is something they may change on us. Then they Planning Board throws it back to us to reapprove a new lot.

Sam said that may be what we need to do is review what information we need to get in the application and the quality of that information. If we move past accepting the application, we can make it a condition that we get a more accurate map. He said this gives us an idea of what they are hoping for but doesn't give you a detailed picture that we feel comfortable moving something onto the Planning Board. We could make it a condition if we accept the application. We may need a better picture before we move forward. Sam said the applicant hasn't done anything wrong with the drawing. Maybe our request wasn't specific enough, to ask for what we really want to be seeing. Janice reiterated that the applicant hasn't done anything wrong, they have met the requirements.

Harry said if we do decide to consider this tonight, he thinks it is important that we just focus on what we do. That is to consider a Variance. We are not the Planning Board.

Howard said he believes this is one of those rare instances where this calls for a joint ZBA and Planning Board meeting with the applicant. A lot of this can be hashed out at that time. There is a little background information than what we have been provided from the notes of the Planning Board meeting. The Chair said it is not even the Planning Board's to deal with. If this Variance isn't granted there is nothing for them to go forward with. The applicant is at the point where whatever we do here tonight is going to affect what they need to present to the Planning Board going forward, or not.

Howard said it doesn't seem fair because he is not against the applicants. He is just trying to find a way for this to be done without breaking a lot of rules. We could be breaking a lot of rules by issuing this Variance.

The Chair said let's proceed with the accepting of the application, those other questions could come up in our discussion. Beverley said so we are accepting an incomplete application. Is that stated in the motion. The Chair said, we stated that number 5 would have to be completed in the verbal testimony. Sam said he believes his motion was to accept it as submitted.

Harry said he thinks it is a little bit confusing that we voted to accept something just so we could have a discussion about it. We should have had that discussion first. Now we have accepted it. The Chair said, no, we have a motion to accept it. We have not voted on the motion.

The Chair said a "yes" vote is to accept the application as is. A "no" vote is to deny the application. **Harry – No, Bev – No, Howard – No, Sam – No, Barb – Yes. Tally: 4-to-1. The application is denied for incompleteness. Howard asked where the applicant goes from here. The Chair said they would have to resubmit it.**

Janice suggested the board could make a motion to accept the application with verbal testimony. The Chair said that was in the motion. Sam said it wasn't in the motion. The Chair said it was understood. Janice said it would have to be an amendment, at the time, or now as a separate motion. She said she was just putting it out there for consideration.

The Chair said if they do come back with this application, other than number 5 which is very important, she didn't think they could ask for other maps. She said these are the only maps available. Howard said they could submit a surveyed map of the subdivision. The Chair said

UNAPPROVED - Minutes of August 11, 2021

she didn't think they could ask them for a surveyor to come in, that is an expensive proposition. Howard said he has the map in the application and that isn't legal enough for him. Harry thought all they should do is answer question 5. Sam agreed. We would like to see in writing the response to number 5. Sam said if we can look at the application a week before the meeting then we have an understanding of what we are looking at.

The Chair said often she will go back and look at old records based on what is in the application. Not to have that ahead of time, is a disadvantage. Janice asked if it would be acceptable to the board that they move on to another agenda item and the applicant can go into my office and work a written response to number 5? Harry said, no. Harry said the application would be a lot stronger if they go home and think about this and come back. These questions are the meaty questions which need to be answered properly. He said, if they are considering them thoughtfully it will be better done. Then they can come back and actually write them down and get it clear. Instead of just standing up and winging it and come up with something on the spot. He felt it was really important that they do that.

The Chair said especially in this application, she thinks number 5 is paramount to what is being asked for. Harry said he also thinks their application will be a lot stronger and their chances stronger. Howard said it could be a stronger application.

Howard said he has a real problem with the Right-of-Way (ROW) not being on the property. Janice said you can't discuss this if you are not . . . Howard interjected, if you are going to draw a map, you don't have to go back to the original, meaning the exact same lot. He has seen maps where they come right down the old lot line up until the old ROW comes in. If you draw that line on the other side of the ROW, which would include it into the lot you are trying to subdivide. The way some of this could be improved would make it a lot easier to get approval. He said he was trying to be helpful.

Sam said like the conditions we can work with the applicant when we see something that is odd, or tricky or sticky.

The Chair clarified they are asking the applicant to resubmit the completed application. Fran Brown noted that she read the application and didn't understand number 5 and then she forgot to complete it. We can't sell the property and no one can get financing, that may be a hardship. Sam said I would think so. Michael Brown said you can't get a clear title for the property because of that. He was confused by the word, subdivision. There are two separate deeded lots, that are there now. We are not surveying, there are two separate lots in the Merrimack County Registry of Deeds. One is 1.3 acres and one is 3 acres, the tower lot and the house lot. The town has them use one tax card. Michael said the hardship is that we cannot get financing because of it. Whoever buys the house is responsible for \$1,500 taxes a year on the tower. Which is on a separate deed. We can't sell the house and get a clear title. We don't know what to do with the house.

The Chair said that is exactly what you should be spelling out in section 5. Fran said, what you want is something in writing. The Chair said absolutely. Mark Violette said he was disappointed that he came up from Florida to be at this meeting. He said there are two lots, which go back to the 1980's. His father was part of this whole process, it was originally used by cable TV location. As far as the ROW it is a driveway that goes into that separate driveway

UNAPPROVED - Minutes of August 11, 2021

that goes into that tower. Maintained by the owners of the tower. At some point the town decided we were going to get one tax bill for both lots. Mark said, they could fix that.

There was conversation between public and applicants. The Chair asked there to be no discussion. Michael said they would reapply. He said there was discussion about an inaccurate map and asked if the recorded deed would satisfy that need. Howard said the recorded deed gives some information. Howard said the recorded deed says it is annexed to the other track. He said it is really considered a merger of two lots. The Chair said it was a lot line adjustment. Howard said it is one lot, not two, to be subdivided. His point was to be divided off like that, it doesn't have to go to the original exact dimensions of the other lot. You can move it over 50 feet or so and get something else acceptable, with that driveway being part of the lot.

Mark said now you are closer to another property line, so it sits closer to where the house property line is. The Chair asked if there was any other comments. Howard said even though this isn't part of the application, it was really good to speak to the applicant. Even though this isn't official, we aren't reviewing the application. There was information provided by the minutes of your meeting with the Planning Board. That is why I suggested it would be a good idea to have a joint meeting with the Planning Board. Of course, he said, the Zoning Board would have to approve a Variance but, we would know exactly what we are voting on. There were questions in their minutes about the driveway placement. The Chair said they really can't do anything until we decide on the Variance. She said then it either does or does not go back to the Planning Board. Michael confirmed whether the board was aware they met with the Planning Board. The Chair said they were aware.

A public member said there was discussion about the ROW. Howard said, yes. She said it is jammed up against the property line. She is not sure how you would change that. The Chair said when you send the map back in, because right now it is unclear, where that ROW is. Howard said it is drawn in on the application it is quite clear. What they have says tower road, it is sufficient. The Chair said there is no footage, it would be nice if it was a little more defined.

Harry said is it possible for the applicants to sit down with Janice to have a discussion about what the meaning is when we say "owing to special conditions of the property". This is something the lay person may not understand. The Chair said they know they can go to you and Janice responded, yes. Harry explained to Janice an example for this type of condition. If you have a banana shaped piece of property and you got a road and you got a lake. You have to be so many feet from the road and so many feet from the lake so your house has to be a banana, right. He agreed it was maybe a silly example, but they are looking for something distinguishing about the property. This one has a cell tower. The Chair said it is distinguishing. Janice said it is not the Town's responsibility to help an applicant fill out an application. You could get into some grey areas. But, if they have questions, absolutely she would do what she could.

Harry said if they are to come to you Janice, I will give you another example of no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property. If someone has a property which meets all the ordinances, and they have 100 acres and the only place where they can build the house is ten feet from the property line on the side and the setback is 15 feet. But, there are no houses for a quarter of a mile. So, the whole idea of a setback from the

UNAPPROVED - Minutes of August 11, 2021

side, it doesn't really affect anything. He said that would be an example of no fair and reasonable connection. Janice said it is tricky speaking with an applicant we don't want to make promises. You don't want to give the impression it is going to go their way if they do what we suggest. Harry said he wasn't suggesting that. Janice said she understands what the requirement for that condition is and is concerned it is interrupted different by everyone. She said it is determined different by the applicant, by every ZBA member. I could give them some guidance and I am not a voting member. She said she will do what she can. She said she has been in contact with Fran and Mark and is sure they know she is available.

Mark Violette said they think they would have been able to answer the questions as part of their presentation. They thanked the board and the applicants and the public left the meeting room. Janice told them they could contact her in the Land Use office with any questions.

The Chair said she felt it was good to set some standards for applications. Beverley said she would have gone out there to measure the lot. The Chair said, they are saying it is two lots but, according to our records it is one lot. Howard said that was why he tried to press the point that once those two are joined and merged the old lot line disappears. Now they are coming back for a subdivision. A subdivision line can be drawn anywhere you want. Beverley said, but, with no frontage. Howard said that is why I suggested they may want to put that little bit in there to cover the driveway. Although, it may make the house lot illegal. Beverley said but don't they need 200 feet. Howard said that is why they need a Variance. They are asking for a whale of a Variance. Harry asked Howard if they could sell the lot off to someone? Beverley asked, sell it as is with the rest of the house. Harry said, I think what they want to do is sell the house. Janice said, you guys can't discuss this without the application before us. She reminded them, they were on the record. Howard said jokingly the record doesn't matter. He said they put down things I don't say, and don't put down things I do say.

The Chair said the question we are asking should have been answered in the application. The purpose of the application is they are trying to sell the house. None of that is spelled out in the application. She said hopefully when they come back with a new application, it will be more thoughtfully filled out. Beverley said we can ask them to use a pen instead of a pencil, she could not read it. Howard said it is a mixed message because in some areas it is tidy. Like on page two the ordinance they are referencing is typed, while the rest is handwritten. Howard said they could answer all of these on a separate page. Janice said, still that is not a requirement of the application process. Howard noted the application he has does not say it has to be typewritten. But, it should be easily understood. Janice said we have all sorts of applicants in town with all sorts of abilities. Done by computers or not computers, pencils or pens. She said we can't expect everyone to submit it on a computer.

Sam said we should put in the word that it has to be legible. Janice said then they have handwriting you can't read. She said she would take a look at the application and work on them over the next year and get them to be autofill format. It would have to be done in a pdf writer. Sam said I would encourage folks to give us more information. Sometimes, it seems they have to cram all their information into a small space. Janice said she has that software at home and would work on it at home. Beverley asked why we don't have that software. Janice said it's expensive. Beverley said instead of doing Zoom cameras why don't we look into that software.

UNAPPROVED - Minutes of August 11, 2021

Lucinda asked a question (inaudible), the Chair responded there is a notation on the application that says attach a sheet for more detail. Sam said if we don't make any room available to write on there, then they would have to supply an attachment. Bullet points of 1, 2, 3, 4, 5 and then say add appropriate information. Beverley asked if we used to have bigger boxes. Harry said he likes Sam's suggestion of listing the questions and leaving no space to answer the questions and they will figure it out. Type it up and attach it. Beverley said it could say attach your responses to this application.

The Chair said these applications are up to us, they do not go through the Planning Board. She will come up with something and to look at it at the next meeting? Janice said we just recently re-did the applications although, is not against making changes. The Chair said it was an ongoing issue. Harry said there is always room for improvement.

4. OLD BUSINESS – Rules of Procedure

The Chair went on the review of the Rules of Procedure agenda item. She asked if anyone wanted to review it tonight. Howard said, no. Harry thought they should do the Rules of Procedure on a night when they are fresh. The Chair agreed. Also, on a night when they don't have a case. Howard said the procedures they are currently operating under are pretty good. Sam asked Janice if the Rule of Procedure have the requirements for an application. No, but, Janice said we have a checklist that is part of the application. It is online but, not forwarded to the board. Janice asked the Chair recently if she wanted the checklist forwarded to the board with the applications. Sam said it would be helpful. The Chair said if everyone could just print out a copy of the checklist online to have in their binders. She felt there wasn't a need for Janice to include it in every application. Janice has noted when something is not complete, and checked the list accordingly. Sometimes zoning article numbers are missing, or fees aren't paid. Recently, an applicant's hearing was delayed due to missing items. Janice admitted again that she missed number five. The Chair said the application being complete is really the applicant's responsibility.

Harry said after the hearing we had on Tyler Lawncare. He was really surprised by the Special Exception criteria on our application. Some of the criteria was, is the use desirable, is the use essential. He has done research. The one's he remembers he read to the board. The specific site is an appropriate location for the proposed use or structure, yes or no. The proposal is detrimental or injurious, obnoxious, or offensive to the neighborhood, yes or no. There will be undo nuisance or serious hazard to pedestrians or to vehicular traffic including the location to be design in accessible ways for off street parking, yes or no. Adequate and appropriate facilities will be provided. The proposed use or structure consistent with the spirit of the ordinance. He said when someone comes for a Special Exception it is permitted. We should be trying to figure out, okay it is permitted but, is it going to be detrimental to the community? Is it going to be obnoxious, is it going to cause traffic? Is it consistent with the Master Plan? But is it desirable or essential, those two questions miss the mark for me in terms of flushing out specifics.

Howard said he thinks they are listed in the RSA's. The state requires those questions. Howard tried to find them in the RSA handbook. Harry said when you find it, let him know, he looked for a long time. He could not find them. Janice said RSA 674:33 is referenced on the Special Exception application. There may be some guidance there. Sam asked and Janice provided a book to Lucinda. Janice said that RSA doesn't seem to have real good information.

UNAPPROVED - Minutes of August 11, 2021

Janice said it was crafted to be in alignment with the state. She said Rick Davies worked on those specific conditions. Harry said the application he was reading came from the town of Hopkinton. The Chair said they do struggle with those questions. Janice said when we attend the OSI Training they usually have all the same criteria. Although, she said if we have some leeway, we should try to change it. The Chair said it should be more specific and easier for us to decide. Sam said some of those descriptions could be used as clarification points on the questions. It could help us think about desirable and what that means. The Chair said what is desirable to one person might not be desirable to another.

Harry asked about the Office of Planning's workshop. The Chair said it was online and both she and Janice attended. He asked if there is another one, coming up. The Chair said Janice sent everyone the link. Janice said she would resend it, to Harry. The Chair said they are online for a duration of about an hour. Janice said she thought it has changed to an hour and a half. They found an hour wasn't quite enough.

- 6. Harry made a motion to adjourn. Seconded by Bev. Tally: 5-to-0.** The meeting was adjourned at 8:15 (?).