



TOWN OF WARNER

P.O. Box 59, 5 East Main Street
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
Fax: (603) 456-2297

**Zoning Board of Adjustment
Minutes of July 13, 2022**

Town Hall in the Lower Meeting Room

1. The Chair opened the ZBA meeting on at 7:05 PM.

A. ROLL CALL

Board Member	Present	Absent
Barbara Marty (Chair)	✓	
Harry Seidel (Vice Chair)	✓	
Jan Gugliotti (Alternate)	✓	
Beverley Howe (excused)		✓
Elizabeth Labbe (excused)		✓
Lucinda McQueen	✓	

Also present: Janice Loz, Land Use Administrator

2. NEW BUSINESS

The Chair elevated Jan G. and Karen Coyne (new member – Alternate) to regular voting members.

A. Application for a Variance. Case: 2022-02

Applicant: Christopher M. Roy

Agent: Christopher M. Roy

Address: 61 West Roby District Road

Map/Lot: Map 16, Lot 19

District: R2

Description: Wants to build a 26 x 8-foot covered porch to extend the front of the home. Setback condition exists preventing building permit approval. House front setback to road is 22-feet. (Applicant is requesting a Variance to the terms of Article VI, Section C.1.b.)

The Chair introduced the application for a Variance, Case number 2022-2 for Christopher Roy, 16 West Roby District Road, in the R-2 District. They are looking for a variance to the yard requirements which indicates that no building shall be located nearer than 25 feet to the abutter's line and 40-feet from the edge of any public right-of-way. She indicated

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they are seeking a variance in order to build a porch onto their existing house which will encroach on the public ROW.

The Chair described the process for the hearing, first the board will vote on whether or not to accept the application as complete. Then the applicant will present the application to the board. The applicant will sit at the table provided and review their responses to the five questions for the variance. After which the board will ask questions of the applicant. Then members of the public or abutters will be called on to give input. After all questions have been answered the public portion of the meeting will be closed. The board will discuss and hopefully decide tonight.

The Chair then asked Janice, Land Use Administration, if the abutter notices went out and if the fees were collected. Janice said the only fee that have not been collected is the fee for the newspaper notice, which will be invoiced to the applicant after the Town has received the bill.

The Chair asked if the board had any questions about the completeness of the application. She commented that board members were shaking their heads "no." There were no verbal comments from the board members. Harry said he didn't have any questions about that, he did have a question about the ROW and which district the property is in. The Chair said it is in an R-2 district, which states the setback is 40 feet from the edge of the ROW, which is what the variance is for. Harry clarified it is 40-feet from the edge of the ROW. The Chair agreed.

The Chair said the application does look complete to her and said she would be happy to entertain a motion on accepting the application.

Harry Seidel made a motion to accept the application as complete. Lucinda McQueen seconded the motion. Discussion: None. **Voice Vote Tally:** 5 to 0. The application was accepted as complete.

The Chair asked the applicant to read through the five questions and their responses on the application and encouraged them to expand on their written responses. The Chair commented that when accepting the application, the board should consider regional impact. She said it is on a dead-end street, and far enough away from any abutting towns, she didn't think there was any impact. Harry commented that was a good catch.

The applicant, Christopher Roy, read his responses into the record:

1. *Granting the variance will not be contrary to the public interest because*

He would like to build a porch on the front of the house which is 22-feet and build it out 8-feet, setback between the porch and the road will be 14-feet. Which is less than the 40-feet stipulated in the ordinance. As far as he can remember plowing is not an issue. There has only been a cutback to the snowbanks once that he can think of which is always done on the reverse side. They try to stay away from the north side of the street. Most of the houses are on the north side. That is the only thing he can come up with in terms of space issues.

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The Chair interjected that public safety is a consideration. Will it be interfering with any road traffic, will there be bright lights which might affect somebody's ability to see.

Christopher said, it is a dead-end road, and it has a finite number of houses on it, no one can build other houses on the properties. He is pretty sure the bridge connecting West and East Roby District Road will never be built back again. He is pretty sure they are not going to build a two-lane highway there. Although, it used to be a main road.

The Chair interjected the letter we have from Tim Allen said there will be no issues with the addition being close to the edge of the ROW, as long as it is known that someday there could be improvements. She said he doesn't see anything but a rebuild of the road in the potential future.

Christopher said down the road they may re-pave it but, he even doubts they would do that. The Chair said or that it would be any wider than it is. Christopher said he isn't a road agent, but, that is what he guessed.

The Chair asked Christopher to go on to the second question. Harry inquired about asking questions of the applicant. The Chair said let him present the application and then the board will ask questions.

2. *By granting the variance, the spirit of the ordinance is observed because:*

He applied for the variance to adjust for the single condition based on the age of the building. All other conditions for building the porch are met. The setbacks are the only issue he is having. If this was 1930's or 1830's when this place was built, he could just build what he wanted because there were no rules. If the house was built today, obviously, it would not be this close to the road.

3. *By granting the variance substantial justice is done because:*

He said, he agreed and wanted to preserve the standards that keep our town decent. He also wanted to make the home better than how he found it and a more enjoyable space to live in. He bought his house when it as a foreclosure and it was kind of a hot mess. He encountered problems with multiple things including, insulation, heating and the roofing was a disaster. He has made a lot of improvements. This is just one more thing he wants to do to improve it and make it a better space.

4. *Granting the variance will not diminish the values of surrounding properties because:*

The proposed addition will add curb appeal and a more inviting and finished modern look to the front of the home. Adding a three season living space with an easier entrance will increase the assessed home value and subsequent tax revenue. If he wanted to take a shipping container and stick it on the other end of his house there would be no room and would look pretty terrible and he wouldn't have approved of that either. This change he said would fit with the style and the age of the house and make it look better even though it is close to the road.

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5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:*

Christopher said he answered this in kind of a mixed way.

This home was built in the 1840's on what was then, the main road from Warner to Bradford. It cannot be held to today's building standards. Back then he said, these standards wouldn't exist. If the house was built today, he wouldn't be here because he would have followed the building standards.

The front face of the home looks due south with the eave end of the roof meeting that face. In winter all snow from the south roof will melt and end up on the front stone steps, which turns to ice. He thought about a small landing and a small roof but that would only project the ice out a couple of feet. With having the entrance on the side of the covered porch it is a lot safer.

The Chair asked Christopher if he wanted to add anything else at this time. He said that was it. The Chair asked the board if they had questions.

Harry asked about Christopher's response to the first condition, "it will not be contrary to the public interest because". Harry said he understood what the applicant said about the roads and the snowbanks. Although, there is a reason why the town has a 40-foot setback. One of the things it does is give a way for rainwater, run-off from a building to be absorbed before it rushes to the street. Harry said the applicant has a building that is 22-feet from the street with a slope down to the street. The porch will extend an additional 8-feet, leaving a 14-foot setback. Harry said he was concerned about when the rain rushes off the roof in a torrent, and there may be more of these kinds of weather events. He wondered what the impact of that may be when the roof is just 14-feet from the street. He thought that may be contrary to the public interest. It could cause flooding and an icing situation in the winter. He asked Christopher what his thoughts were about that concern.

Christopher said looking at the river to the left, there is a culvert that goes under the road which catches all the run-off on Route 103, which was installed years ago. The water used to end up in his basement, then someone diverted it and sent it through his yard and then it goes under the road. Most of the rainwater on the road goes in the culvert and into the river. In the worst-case scenario, he could put drainage in front of the porch.

The Chair asked if the road is pitched along his side. Christopher said where the road goes past his house is the lowest point on the road. There is some pooling, but it always goes into the culvert. Two years ago, there was an ice dam when the river backed up which is very uncommon. Any heavy rain ends up in the culvert across the street.

Harry said he saw the culvert and agrees the culvert would manage the water. He asked Christopher is it reasonable to consider a rain gutter on the edge of roof to ensure that the water is collected. Harry said that could be a possible condition for public safety. Christopher said that would not be a problem, his entire house is a water issue.

Harry said his concern is really one of definition of a hardship. He spoke to Christopher and said the definition of hardship in zoning is similar to what is unique to your property that causes you a hardship and makes adherence to the regulation a hardship. Harry said the answer Christopher has for a hardship is that the building exists, and ice and snow is

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going to fall off onto the steps. Christopher said they don't want people to get hurt on the steps.

The Chair asked if anybody else on the board had questions. No one commented.

The Chair stated the variance is for relief from the 40-foot setback from the edge of the public right-of-way. Where the house is situated and using the setback from the ROW calculations that Tim Allen gave the board the porch will be right on the ROW. Christopher commented it is 14-feet, whereas Tim estimated 12-to-14-feet. The Chair concurred. She said just to make you aware that you will be at the limit of what is comfortable. Christopher said he won't make a dance studio out front. That is as big as he would want to build the porch.

Janice confirmed that if he builds the 8-foot extension on the building, he will be 14-feet from the edge of the ROW. The Chair said no he will be at the edge of the ROW.

The Chair asked if they going to put posts in or are they digging and installing a foundation under the porch. Christopher said there will be four piers under the porch. The Chair said so there won't be much in terms of silting going into the river. Christopher responded no, just four or five holes.

The Chair said she had no more questions, she asked if there were anyone on Zoom. Janice confirmed there wasn't anyone online. The Chair noted there were no abutter's or public in attendance.

The Chair **closed the public hearing and opened the board deliberations** on the application.

The Chair said, like most of you, she took a ride down to the property. She noted there are houses built close to the road. It is an old road and back in the 1800's they used to build close to the road. So, this won't be out of character. Jan G. interjected it won't be the first time either.

The Chair directed the board to go through the five conditions of the application and to give everyone a chance to comment.

1. Granting the variance will not be contrary to the public interest because

On the first condition, the variance won't be contrary to the public interest. She asked the board if they had something to add to the discussion. The Chair referenced Harry's comment about the run off and keeping it safe and preventing ice dams from forming on the road or excessive run off to erode the road. She said it sounds like the culvert carries most of the water.

Harry asked Janice if the Town of Warner, measures setbacks from the edge of the roofline or the edge of the building. Janice said in the past they have used the overhang of the roof edges. Harry said that means the building could be an 8-foot expansion and the roof is typically a foot overhang at least. Harry said he doesn't have a problem with that, if there is a gutter that catches the water then it is a moot point. The water would be collected, taken down and controlled. The Chair said even if there is a stone drain or something else that collects the water. Harry said it could be a ground gutter. Jan G. said water containment has to happen.

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The Chair said Tim was a little unclear whether it would be less than 25-feet, he didn't say how much less. She said there are 21-feet of pavement, the measurements aren't exact, but, it will be very close. He didn't voice any concerns about it, nor did the Water River Local Advisory Committee. She said they weren't overly concerned about run-off or silting either, which was good to hear.

The Chair asked for further comment on the first condition. There were no further comments by the board.

2. *By granting the variance, the spirit of the ordinance is observed because:*

The Chair said, this is a pre-existing building which was built before the ordinances. So to the best of their ability, the spirit is observed even though the factual measurements cannot be observed.

Jan G. said the spirit seems to be, don't get so close to the road that it will impede snow removal, which does not seem to be happening. Also, a concern could be that people are going to crash into the house going 60 MPH, this is not a 60 MPH road. The Chair agreed and said it isn't going to make it any more crowded.

Harry said he agreed and added the spirit of the ordinance really is to allow owners reasonable use of their property as long as it doesn't cause detriment to the public. If there is a single condition in the building that doesn't work and they are trying to fix that, then he thinks it is acceptable.

The Chair moved onto the third condition of substantial justice. She said if it was in the reverse and if it wasn't granted then she thinks substantial justice would be denied them. Because they are dealing with a pre-existing building. Jan G. said and it is a safety concern. The Chair asked Lucinda or Karen if they had comments. No comments were made.

3. *By granting the variance substantial justice is done because:*

The Chair said this request does not diminish the value of the surrounding properties. In fact they did a good job of answering this condition, it is going to uplift the look of the house. A lot of people are updating their properties in Warner. This should do quite the opposite and help to increase the value of the surrounding properties. She inquired if any other board member had a comment on the this condition. No comments were made.

4. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:*

Jan G. referenced the comment made by the applicant as to snow and ice being a hardship. She said, they would have to walk further around the house to enter because the front entrance is unsafe.

Harry said he feels that the existence of the building itself in that location creates a hardship which is hard to deny or avoid. Harry asked, what do they do, what are the alternatives, they can't rebuild it, you can't move the road, they can't move the river.

The Chair asked if anyone would like to entertain a motion.

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Jan G. made a motion to approve the variance for case 2022-2 for Christopher Roy. Mr. Roy asked for a variance to allow an enclosed porch addition on the front of his house with the dimensions of 26-feet by 8-feet, the 8-foot depth of the porch would cause it to be in non-compliance with Article VI. Section C., 1.b. Given our review of the criteria we feel that he meets the criteria of this request, and he should be granted the variance. Harry seconded the motion. Discussion: The Chair introduced an amendment on the motion. **The Chair made an amended the motion to include Map 16, Lot 19 in the R-2 district. Discussion on the amendment:** She explained the variance goes with the property not the owner. The Chair called a vote on the amendment to the motion. Clarifying the amendment would include the map, lot number and district to the original motion. **Voice Vote Tally:** 5-to-0.

The Chair called for a vote on the amended motion. **Jan G. made a motion to approve the variance for case 2022-2 for Christopher Roy, Map 16, Lot 19 in the R-2 district. Mr. Roy asked for a variance to allow an enclosed porch addition on the front of his house with the dimensions of 26-feet by 8-feet, the 8-foot depth of the porch would cause it to be in non-compliance with Article VI. Section C., 1.b. Given our review of the criteria we feel that he meets the criteria of this request, and he should be granted the variance. Discussion:** None. **Roll Call Vote:** Jan G. – Yes, Harry Seidel – Approve, Lucinda McQueen – Approve, Karen Coyne – Approve, Barbara Marty (Chair) – Approve. A variance for relief from Article VI. Section C., 1.b. was granted.

The Chair informed the applicant that the New Hampshire RSA 677:2: provides that the Select Board, any party to the action, or any person directly affected has a right to appeal this decision within 30 days after the date of the decision. This notice has been placed on file and made available for public inspection in the records of the Zoning Board of Adjustment.

B. The Chair had the new member Karen Coyne introduce herself to the board.

Karen said she has been in Warner since 2019, they own the Red Barn farm. She moved here from Southern California. She was born and raised there. She was very active in her city and in her county. She is the head of technology, HR privacy and Cyber security for Kellogg's. The Chair welcomed Karen to the board.

3. REVIEW OF MINUTES OF PREVIOUS MEETING: May 11, 2022 Minutes

Page 2: The Chair noted in the third paragraph in the very last line it should read “a correction”.

Page 3: Harry noted in the second paragraph the it should read “community Energy Board”.

Page 4: The Chair noted in the first paragraph that only part of the information from the Purpose and Intent section was moved. It should read “some of the information...”.

Page 6: Harry noted the second paragraph from the bottom should read, “the board shall act on all cases within 30 days. The Chair said it is more accurate to say the board shall decide all cases within 30 days of the close of the public hearing. She said this is more accurate because the decision on an application comes after the close of the public hearing, not within 30 days of receiving an application.” Harry stated this section is in reference to a conversation about the board having to act on an application and now it says we will decide. The Chair said under the decision section of the Rules of Procedure, we had a sentence that said we would

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act after 30 days of receiving an application. She said which didn't belong in the decision section, it belonged under the applications section.

Janice said there a deadline to act on an application upon receipt within 15 days, then there is the stipulation to make a decision within 30 days after closing the public hearing. Harry said, he thought we had to act within 30 days, or decide within 30 days. The Chair said we had both under the decision section, which was confusing. Harry clarified that we are saying we will decide within 30 days opposed to saying we will act within 30 days. He said what if we can't decide within 30 days. Janice said you don't have to decide within 30 days there can be a continuance as long as you haven't closed the public hearing. Harry clarified the board should decide all cases within 30 days. The Chair said they will act on an application within 30 days, we will make a decision after the close of the public hearing. The Chair said the public hearing could go on for months. Harry said if an application has regional impact we can't be straight-jacketed into making a decision within 30 days. The Chair said once the public hearing is closed and we have taken all the evidence then we would make a decision within 30 days. Janice said when you closed the public hearing you can't postpone the meeting for two months, you have to meet and decide within 30 days.

Page 8: The Chair noted the third to last sentence under Quorum section which should read "otherwise it sounds like either they object, or you are going to do the latter." Jan G. added missing text to a statement she made, which should read, "Jan G. continued to say, if it is impossible for the board to provide a date, something else should happen."

Page 9: The Chair edited the paragraph above the Order of Business section. It should read, "Any such request shall be made before the public hearing begins unless the information upon which the request is based is not disclosed to the board before the commencement of the public hearing. The vote shall be advisory and non-binding. To a potential conflict of interest . . ."

Harry made an edit to the middle of the second paragraph which should read, "Harry said if someone chooses to recuse, otherwise, they may be deemed disqualified by other factors."

Harry interjected that he did not read the document about regional planning prior to the May meeting. It was noted he had made statements that he would not have made if he had read the regional planning document.

Page 12: The Chair said in the paragraph third up from the bottom of the page should read "That section does not give an out of publishing on a website."

The Chair suggested they hold the recording of the May meeting since it was all about the Rules of Procedure until the document is finalized.

Harry Seidel made a motion to approve the minutes of May 11, 2022 as amended. Jan Gugliotti seconded the motion. Discussion: None. **Voice Vote Tally:** 5 – 0. The minutes of May 11, 2022 were approved as amended.

4. UNFINISHED BUSINESS

A. Rules of Procedure Document (ROP)

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The Chair found a marked-up copy of the document for Karen. The Chair explained that the ROP govern what the board does and how they do it. The Chair explained the strike-through wording is marked to be deleted, the underline wording are additions, the green text are wording to be moved, the black text remains unchanged.

The board left off at the public hearing section. The Chair asked the board if they wanted to wait for Elizabeth and Bev's participation at the next meeting. Jan G. said they couldn't really speak to any of Elizabeth's suggestions without her participation. Janice suggested it would give Karen a chance to go through the document. The conversation was tabled until the August board meeting.

5. COMMUNICATIONS AND MISCELLANEOUS

The Chair attended the Planning Board meeting on Monday. Ben Frost had said there were changes coming through the legislature that might impact ROP documents. She was not sure if it impacted only the Planning Board (PB), or the ZBA as well. She said the PB were doing their ROP as well. Janice said it had to do with Fact-and-Finding's documentation, which may be different for the ZBA because they answer criteria and conditions of applications.

The Chair said they also discussed several requests to the Land Use office for information on Warner's regulations of Short Term Rentals (STR's). She said Warner has not really updated the ordinances to address STR's. Ben Frost suggested the Select Board, the PB and the ZBA meet to brainstorm why we may or not need to address this issue. Janice added the meeting would also help to build consensus and determine whether it is regulated in our existing ordinances. The Chair said there is a lot of controversy and legislation about this subject. Janice said she discussed this with Judy and asked which board calls the meeting. Apparently, it would be a Select Board meeting, they would Chair the meeting and invite the other boards. Janice said Ben Frost had wanted input from all three boards.

Janice did have a public inquiry about STR's and whether they were regulated. Janice got feedback from the PB and the ZBA Chair's and the Circuit Rider on whether we regulate it or not. The consensus was that our Use Table identifies Hotels, Motels, Lodgings. Lodgings seem to fit Air BnB's or STR's. Also, the NH Municipal believes they are the same and informs land use boards according. A definition for Short Term Rentals could also be added to the ordinances. The Chair said there seems to be a division over a STR that is not owner occupied versus a Short-Term Rental that is owner occupied. Are those two different things do they need to be governed differently.

The Chair asked Janice to send the board links to information on STR's. Harry said there has been some recent history on this in the Town of Sunapee. Janice said presently the Select Board has decided that we do not regulate STR's.

Janice said the Planning Board is still defining regional impact. They were going to add check boxes to their applications. Janice said she spoke with the Chair about this and wondered if this board wanted to define regional impact in terms of how they impact applications. She suggested the board develop a Regional Impact Checklist when hearing or accepting an application. Janice said the benefit is if a decision on an application is appealed in court, and we had implemented a checklist to determine Regional Impact that decision may be less likely to be challenged. If the Town of Warner's ZBA defines regional impact in a checklist and it was applied to an application the court may be less likely to grant an appeal because regional

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impact was indeed considered. The Chair said there are six things the state believes defines what regional impact involves. She said they could lift it right from there. Also, the RSA defines it as developments which are likely to have impacts beyond the boundary of the single municipality. That is the RSA definition, we could define it further.

Harry asked if the board wants to meet next month on August 10th. The Chair said, yes, whether they have an application before the board, or not.

Harry said he thought the application tonight went well. When the applicant responds to the application on a separate sheet and they put the numbers but, not the specific condition it is difficult to match up the answer to the condition.

Karen asked if the application is in an editable PDF. Janice said she will be getting the software to create PDF fillable forms.

Janice asked the Chair if they want to put the definition of abutters in the application. The Chair said the state's definition of abutter is different than the Town's. In 2020 the PB changed the definition of an abutter to include people within 200-feet or sharing waterfront on the same pond, for notification purposes. The Chair said it is important that we update the definition to match the ordinances. The Chair said 2020 is the current version of the ordinances, noting that no changes were made in 2021. Janice will check the application to see what the definition of abutter is and if it includes the term "pond".

5. ADJOURNMENT (Motion, Second, Vote)

Harry Seidel made a motion to adjourn the meeting. Lucinda McQueen seconded the motion. Voice Vote Tally: 5 – 0. The meeting was adjourned at 8:24 PM.

Submitted by:

Janice Loz