



TOWN OF WARNER

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Zoning Board of Adjustment

Minutes of February 9, 2023

Town Hall in the Lower Meeting Room

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1. The Chair opened the ZBA meeting on at 7:00 PM.

A. ROLL CALL

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

Also present: Janice Loz, Land Use Administrator

2. NEW BUSINESS

Continuance - Application for a Variance to the terms of Article VI.C.1. of the Ordinances

Case: 2022-06

Applicant: Steve Shumsky

Agent: Keach-Nordstrom Associates, Inc., Allison Lewis

Address: 30 Pleasant Pond Road

Map/Lot: Map 26, Lot 25

District: R-2

Description: Currently a non-conforming lot of record encroaching on setbacks. Existing structure will be demolished. The proposed new 864-square-foot single family home will increase the footprint by 112 square feet. The new structure will be 2 feet closer to the roadway.

The Chair opened the continuance of the public hearing for Map 26, Lot 25 on 30 Pleasant Pond Road. An appeal for a Variance to replace the existing building closer to the road encroaching on the setback limitations.

The Chair confirmed whether the application was complete with the board. Although, the Chair stated the board did accept the application as complete at the January 11th meeting. She asked if any members had questions about whether the application was complete. The Chair noted on the checklist, the applicant did not indicate that the notice of violation was included

36 in the application, although it was included. The Chair reconfirmed the fees for the application
37 had been collected. Janice said, yes.

38 Allison Lewis introduced herself and Tony Basso, both from Keach-Nordstrom Associations.
39 They are representing Steve Shumsky the applicant. The existing lot has one house, which is
40 678 square feet, a detached shed to the north and a dock and concrete pad to the south. The
41 existing house is dilapidated and the Shumsky's cannot use it or stay overnight in it. In order
42 to utilize the property, they want to be rebuild. They are proposing a 792-square-foot cottage
43 in roughly the same area as the existing house. The new building will square off the footprint.

44 Allison continued to say the property exists as a nonconforming lot, it is .106 acres in size.
45 The depth varies between 39 and 27 feet and in this zone the setback is 40 feet. If it strictly
46 conformed to the zoning ordinance it would not be possible to build anything at all. The Chair
47 said, right, exactly.

48 Allison said in September of 2022, they received a stormwater permit to build this proposed
49 building. Tony corrected Allison, to say a Shoreland Permit. Allison said the process involved
50 designing a 2-foot-deep infiltration trench between Pleasant Pond Road and the house. That
51 will capture the increased runoff from the new building and infiltrate it into the ground. A
52 planting design is also part of the process. That will revitalize the environment around it and
53 help recharge the groundwater. Also, included in the permitting process would be moving the
54 proposed building approximately 2.5-feet back. This would also move the house further away
55 from Pleasant Pond to help mitigate the impact. There will be land between that trench and
56 the property line.

57 Allison said the reason they are in front of the board tonight is to ask for a Variance to the
58 terms of Article VI.C.1. relative to setbacks.

59 Beverley Howe asked about the neighbor's land. Allison said there is land next to the site, but
60 no homes currently. Although, the proposed house meets the side setbacks.

61 Harry Seidel referenced the existing conditions plan and the west corner of the building. It
62 appears to be in almost the exact same spot, by two-tenths of a foot. So, he does not
63 understand how they can say the building was actually moved back. He can see that part of
64 the building was the porch which will be deleted. But the building itself, 14-feet 4-inches in the
65 main part on the north side and that corner were on the contour line or very close to it. He said
66 now it is wider at 18-feet wide. So, it is really not accurate to say that the building has been
67 moved back 2-feet further away from the lake. He said the building is basically in the same
68 spot. Harry asked for confirmation.

69 Tony said that is partially true, except the NH Department of Environmental Services (DES)
70 absolutely considered the porch as a structure built in the shoreland area. That is why they
71 included the porch area in their statement about moving the structure back from the pond.
72 The DES were looking for all pieces of the house to be moved, according to them the porch
73 is no different than any part of the structure.

74 Harry wanted to clarify the narrative that they are actually moving the building back 2 feet. He
75 said they haven't really moved it back, they have just eliminated a porch. Tony said from DES's
76 perspective they did, but if the board looks at differently that is fine.

77 The Chair asked if the porch is on foundations or on pilings, or stones? The applicant
78 confirmed it is on stones.

79 Tony asked if the board wanted the criteria read into the record. The Chair said if they want to
80 summarize their responses, they do not have to read every word.

81 **(Condition 1) Granting the variance will not be contrary to the public interest because.**
82 Allison said the existing building is dilapidated and rebuilding the house would benefit the
83 public interest because it is currently a dangerous issue. Building something brand new would
84 also bring value to the surrounding properties and better the neighborhood. Also, there is
85 plenty of room for snow plowing with the new build, which will do no harm to public interest.

86 **(Condition 2) By granting the variance, the spirit of the ordinance is observed because.**
87 Allison said the medium density residential zone was established to provide space for the
88 development of residential homes and limited agricultural uses. There is a residential home
89 that sits on the property today which meets the side setbacks. The proposed structure will
90 also meet the side setback requirements. Building a structure 7-feet away from the Right-of-
91 way and 5.5 feet from the roof overhang does not cause any risk to the public as major safety
92 concerns with snow removal will not be impacted by granting this variance. The runoff from
93 the property into Pleasant Pond Road will also be improved by allowing the structure to be
94 built. Currently, the rainwater that hits the building is being directed into the ground untreated,
95 and we do not know what the building is made from. If they are able to rebuild the property,
96 they will have treat rainwater that is being recharged into the ground.

97 **(Condition 3) By granting the variance substantial justice is done because.** Allison said
98 substantial justice will be done to the property owner by granting the variance. Without
99 granting the variance the Shumsky's can't use the property, they will have to sell it or let it sit
100 vacant. They love Warner and Pleasant Pond and would like to experience it and be able to
101 stay on the property.

102 **(Condition 4) Granting the variance will not diminish the values of surrounding**
103 **properties because.** The proposed use will not diminish the values of the surrounding
104 properties. The property are located in a medium residential zone. The proposed design is a
105 single-family seasonal house which is the same as the surrounding properties. Construction
106 of the home is in keeping with the surrounding existing buildings. They are requesting a
107 dimensional variance to allow the applicants to build the purposed structure and it won't affect
108 the surrounding property values. Replacing the existing damaged home with an updated
109 structure of similar size will only help the values of surrounding properties.

110 **(Conditions 5.A.i and ii) Literal enforcement of the provisions of the ordinance would**
111 **result in an unnecessary hardship.** Allison said this property does have special conditions.
112 The parcel is only .106 acres in size and restricted by Pleasant Pond Road and Pleasant
113 Pond. This lot deeds back to before the 1890's. At the time, Pleasant Pond was much smaller,
114 and the roads were smaller. At the time it was most likely a fully buildable lot. Throughout the
115 years Pleasant Pond has grown and zoning ordinances have been created and amended.
116 This has led the lot to be nonconforming in modern times. No apparent and substantial
117 relationship exists between the general public purposes of the front yard setback in this
118 specific application of the provisions to the property. As stated, the purpose of the front yard
119 setback is to avoid overcrowding right-of-way's and protect public safety. Here the public
120 safety is not only protected but improved with the drainage and improvements along with the
121 removal of a possibly dangerous dilapidated building public safety is upheld. The proposed
122 use of the project is a reasonable one as there is a residential building on the property today.
123 That residential use is allowed in the zoning district. The proposed structure itself is a
124 reasonable use, the building will only be 114-square-feet larger than the existing house and
125 2-feet closer to Pleasant Pond Road. The applicant is not looking to build an excessively large
126 home that encroaches on the neighbors and the roadway. But instead, a reasonably sized

127 reflection of what is currently on the property. If literal enforcement of the ordinance were to
128 happen, then the lot would sit untouched with a decaying building on the property. This would
129 not benefit the town and surrounding properties.

130 The Chair referred to the table on the plans, the front yard setbacks for the existing house is
131 listed as 10.63 feet. The proposed house is set back 7 feet and the roof overhang will be 5.5
132 feet. So, in the narrative the applicant said it is only 2-feet closer to the road. But the numbers
133 on the drawing/map disagree with that. She asked the applicant how they got to the 2-feet
134 setback?

135 Allison said the 2-feet number did not include the roof overhang. Including the roof overhang,
136 it would be 3.5-feet closer. The Chair clarified they are going from the current setback of 10.63-
137 feet with the roof overhang to a 5.5-feet setback. Allison concurred and said she believes the
138 updated plans has that in the table. The Chair said it is in the description.

139 The Chair asked if this was the same drawings the DES received? Because the date on the
140 DES drawings is different. Allison said it was dated differently because that is when the plans
141 were submitted. The plans submitted to the DES are different because the requirements are
142 different. Allison said the building location and setbacks have not changed. The Chair asked
143 Allison to point out the drip line infiltration trenches. Allison pointed to the gravel adjacent to
144 the road. The Chair said the roofline goes off in the other direction, are you capturing that
145 water and bringing it back to the front. Allison said the roof runoff for new buildings does not
146 have to be treated according to the state. Because of the existing building they only had to
147 mitigate a small percentage of runoff. The front pitch is not making its way into the infiltration
148 trench, it will make its way into the vegetative areas.

149 The Chair held up a drawing and pointed to Pleasant Pond in the front and the sliding glass
150 doors facing the pond. The roofline is on either side of the building, not front to back, therefore
151 how are they picking up the water coming off the roof. There was conversation between Allison
152 and Tony and the applicant Steve Shumsky about the orientation of the building and where
153 the glass sliders were placed. Allison and Tony thought the roof was pitched front to back on
154 the house, Steve clarified that the roof is pitched left to right on the house, with the sliders on
155 the side of the house facing the pond. Steve apologized for the confusion. Tony said that is
156 not what the floor plan shows. Steve wondered what the problem is with the different
157 configuration of the roofline. Allison said if that is the case, they can easily move the infiltration.
158 Steve wondered what the difference is in changing the roof from left to right as it will not
159 overhang the road. Tony said they can adjust the drawing, but, it is not what the drawings
160 currently show. Steve said this is just about a variance anyway, right? The Chair said they will
161 file the plot plan if the variance is granted, so we will need it to be correct. Janice said they
162 don't file variance plans with the county. The Chair said they can, and she thought they should.
163 Steve asked Tony if it was a big difference to change the plan. Tony said it can be changed
164 easily. Steve said whatever it takes to do it correctly, they will.

165 Steve said his intention is not to use an asphalt roof which he hopes does not throw another
166 curve ball into the situation. Steve didn't want the snow and drainage from the roof close to
167 the road. He also wants to use concrete boards to prevent rot. He just wants to build something
168 for retirement.

169 The Chair said she assumed the front area would take the runoff from the house, like a curtain
170 drain. Harry said that is not what he thought and that is not what the submitted narrative says.
171 The Chair agreed.

172 Harry said the narrative talks about designing a drip edge on the eastern side of the building.
173 The drainage design is to mitigate the run-off from the building. Harry said in the plan
174 submitted to DES, the dotted line for the roof is actually not the ridge line. The edge of it is
175 shown on the drawing and if you look closely there is a larger overhang on the east and the
176 west and a lesser overhang on the north and the south, which is typical. Harry held up a plan
177 while saying the DES did not have the benefit of the plan submitted to the board. He said the
178 two plans are contrary to each other. Harry said the DES could look at this and think maybe it
179 was a type of roof where all the water is shedding back away from the lake. The Chair and
180 Harry concurred on the inconsistencies in the plans.

181 Harry said that is why when they came before the board, he originally asked for the plans. He
182 said if they don't have an Architect's drawing showing where the ridge and eaves are then
183 they really don't know. He thinks it is a deception to show the board they are doing great stuff
184 and mitigating the water when actually they aren't at all. The rainwater isn't at all going to be
185 affected by the measures they have on the east side of the building.

186 Tony said he takes exception to the deception comment. They had a miscommunication
187 between the engineers and the property owner/client. Tony asked if they could put away the
188 angry language, there is no deception. It is their intention to treat the water. If the board would
189 like them to fix the plans and come back that is totally fine. He didn't appreciate being accused
190 of lying to the board.

191 The Chair interjected with a question, would the modification to the plan make a difference to
192 the DES impact permit? Tony said, no, because they have to treat the stormwater in the trench
193 no matter how it gets there. They have to honor what they told the DES, which was to get that
194 drainage into the infiltration trench in the front.

195 Allison said the dotted line on the shoreland plan is the limit of work that our wetland scientist
196 put together for taking down the existing building. Although, it may not be called out that way
197 on the plan.

198 Harry said the drawing that was submitted with the application is labeled roof overhang with
199 a dotted line. Harry apologized for speaking plainly. The board is trying to understand the facts
200 and what is proposed and trying to protect Pleasant Pond. Tony said that is understood. Harry
201 said they all know rainwater must be managed especially because there are an increasing
202 number of severe storms. Every year it becomes harder. The submittal to the DES does not
203 agree with the plan. Harry wondered how the DES would have approved the architecture
204 when it is not the same in both plans. Harry commented about the commitment to move the
205 water and concerns over the slope of the property. He concluded there were inconsistencies.

206 Tony asked the board if the application could be tabled for a month? They will come back with
207 the corrected DES permit and get the plan straightened out. The Chair responded, absolutely.

208 The Chair stated that there was public present at the meeting. She commented that it is
209 sometimes inconvenient for the public to come back. She asked the applicant if they mind
210 having the public comment on the application, tonight? Tony said that would be fine. The Chair
211 asked for public comment.

212 Peter Wyman said he owns the property on the right, the left and across the street from this
213 property. They have been looking at the house on this property for the last 20 years, it has
214 continued to deteriorate. The shed that is existing on the property is actually closer to the road
215 then what is being proposed. So therefore, he really doesn't see, based on his knowledge of
216 the town, why there would be an issue. The rainwater is always going to be there, the pond
217 goes low every summer by at least three-to-four feet in elevation. When it goes down and

218 creeps back it would be nice if the water was a little higher. He doesn't think there will be any
219 impact on his property.

220 The Chair asked if he ever considered building on those properties. Peter responded they
221 were too small. Peter said on the south side is where they store the canoes and boats for the
222 campground and mobile home park. Then there is a beach area, where nothing can be built.
223 On the other side he has a chunk of land that goes around the corner with a dock and a
224 hydrant which they have given the town permission to use. Across the street is the
225 campground, and he has no intentions of putting campers next to the road. All that area is
226 grass and is going to stay grass. The Chair thanked Peter for his comments.

227 The Chair said they will continue the public hearing on March 8, 2023. The Chair apologized
228 for any offense taken by the applicants. Tony apologized for the miscommunication.

229 **3. REVIEW OF MINUTES OF PREVIOUS MEETING:** January 11, 2023

230 The board reviewed the minutes of January 11. **Harry Seidel made a motion to accept the**
231 **minutes as amended for January 11, 2023. Jan Gugliotti seconded the motion.**
232 **Discussion:** None. **Hand Vote Tally:** 5 – 0. The minutes of January 11, 2023 were approved
233 as amended.

234 **4. UNFINISHED BUSINESS**

235 A. Rules of Procedure Document (ROP)

236 The Chair noted two changes to the ROP document. The index has been removed. The
237 second change was made to Page 5, under "Order of Business," "New Business" has
238 been moved up to number 4. There were no objections to either change.

239 **Beverley Howe made a motion to accept the changes made to the Rules of**
240 **Procedure. Lucinda McQueen seconded the motion. Discussion:** None. **Hand Vote**
241 **Tally:** 5 – 0. The changes to the Rules of Procedure were accepted.

242 Harry asked if they have to view the document one more time before it is finally accepted.
243 The Chair concurred the document has to be available for public comment for two
244 meetings.

245 **5. COMMUNICATIONS AND MISCELLANEOUS**

246 The board discussed reviewing and amending the applications. Janice asked to be part of that
247 process. The Chair concurred.

248 The Chair said one change should be if anyone else comes before the board for a variance
249 from frontage, we should require a plot plan. Jan G. said there should be a plot plan and a
250 blueprint showing the building structure. The Chair said they already require a floor plan. Jan
251 G. said there should be something showing the height. The Chair said that is already part of
252 our requirements. Also, the Chair said if the applicants deed has any preservation easements
253 or agricultural preservation easements those organizations need to be included in the public
254 notice process. The Chair said they will look at the application as a group to see where they
255 can make improvements and make things clear for the applicants.

256 Janice suggested putting in the application the right-of-way demarcation for a variance, to be
257 the property lot line adjacent to the road for setback delineations. The Chair was concerned
258 that would conflict with right-of-way references in the ordinances. Janice agreed that is a
259 problem, the ordinances reference right-of-way which is a difficult measurement to determine.
260 The Chair said they should think about it and push the Planning Board a bit on this issue.

261

262 Jan G. said she understood that the Planning Board punted on the issue of Air BnB's/Short
263 Term Rentals (STR's). Jan G. asked where that left this board, if someone comes in and wants
264 to convert their home into a STR, is there anything stopping them. The Chair said they would
265 need a variance.

266 Janice said not necessarily, there is court precedence that determined "Lodging" is a term that
267 could include STR's. Especially if "Lodging" is not defined. A lodging needs a Special
268 Exception, in most districts.

269 Jan G. suggested they develop criteria, determine if a STR is owner occupied 100% of the
270 time, a few months out of the year, or never owner occupied. Then they could define how
271 many bedrooms, how many bathrooms and if they need a septic tank. A list of criteria and
272 then make a logical connection to the five reasons that would grant or not grant a STR in a
273 given situation.

274 The Chair said the Planning Board has applied for a grant to rewrite the housing section of
275 the Master Plan. This spring and summer they will be rewriting the housing section. They said
276 during that process they will take up the discussion of STR's as part of the big picture of
277 housing in Warner.

278 Janice said the Planning Board also recommended the Select Board do a permit process for
279 STR's.

280 Beverley communicated frustration with decisions made by this board that are not enforced.
281 The Chair felt some of the decisions were enforced through the building permit process. The
282 Chair said anything the ZBA reaches a decision on, is then up to the Select Board to enforce.
283 The process is usually if someone sees a zoning violation then it is reported to the Select
284 Board.

285 **6. ADJOURNMENT (Motion, Second, Vote)**

286 **Harry Seidel made a motion to adjourn the meeting. Lucinda McQueen seconded the**
287 **motion. Hand Vote Tally: 5 – 0. The meeting was adjourned at 8:13 PM.**

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290 /jll