



TOWN OF WARNER

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Zoning Board of Adjustment

Minutes of March 8, 2023

Town Hall in the Lower Meeting Room

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

2 A. ROLL CALL

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

3 Also present: Janice Loz, Land Use Administrator

4 Public Attendance: Allison Lewis & Tony Basso of Keach-Nordstrom Associates, Inc.,
5 Steve Shumsky, Lisa Wienckoski.

6 2. NEW BUSINESS

7 Continuanace - Application for a Variance to the terms of Article VI.C.1. of the
8 Ordinances

9 Case: 2022-06 (Review of revised materials).

10 Applicant: Steve Shumsky

11 Agent: Allison Lewis, Tony Basso of Keach-Nordstrom Associates, Inc.,

12 Address: 30 Pleasant Pond Road

13 Map/Lot: Map 26, Lot 25

14 District: R-2

15 Description: Currently a non-conforming lot of record encroaching on setbacks. Existing
16 structure will be demolished. A proposed new 792 square foot single family home to be built.
17 The new structure will be setback 5.5-feet from the building overhang to the right-of-way.

18 Tony Basso and Allison Lewis from Keach-Nordstrom. The Chair confirmed they are not the
19 architects of the project. Tony said they are the civil engineers. Tony apologized for
20 misinterpreting the plan and for the roof slope being inaccurate at the previous board meeting.

21 Allison confirmed on the revised plans the peak of the house was running across the middle
22 of the house. The water is running off the roof and into trenches. The trench is not running
23 along the roadside, there are two trenches on either side of the house. The Chair noted a new
24 stormwater management document was submitted to NHDES (DES). Tony confirmed a
25 shoreland and wetland permit was submitted to the state because of the proximity to the
26 pond..

27 Harry thought the applicant should go through the criteria. The Chair stated the applicant went
28 through the criteria at the last meeting and said they could briefly review it.

29 Allison re-read the criteria (attached).

30 Harry asked Allison a question about their answer to the first criteria. Harry said replacing a
31 dilapidated cottage on the property will improve the neighborhood. He said from the standpoint
32 of zoning he is more interested in the footprint and impact, than architectural beauty. He said
33 if the building is dilapidated, and as it exists, is a nonconforming lot of record. Someone could
34 take that building and replace it exactly in kind with a beautiful building.

35 Harry had a question about the parking, the applicant is asking to build closer to the right-of-
36 way. He asked where the owner would park his car. Steve Shumsky said they are parking in
37 front and do not plan on keeping the shed. The right side of the building has plenty of room.
38 Harry said this application is for a variance of a non-conforming building that is proposed to
39 be bigger and closer to the road. Harry was conflicted because the board is not supposed to
40 make situations less conforming. He is looking for something from the applicant that makes
41 the project more conforming. So, if the shed, which is actually situated off the property will be
42 coming down...Steve interjected by saying he wanted to store his tools in the shed while
43 working on the property. Tony concurred the shed will be coming down. Steve said the porch
44 and all the "jogs," on the pond facing side of the building, will be squared off. Tony said the
45 narrowness of the building restricts what architecturally they are able to do.

46 Harry asked the board if removing the shed could be a condition. The Chair said, absolutely.

47 Janice had asked the Building Department what happens when someone is taking down a
48 non-conforming building and replacing it in kind how are outside spaces like the porch account
49 for. Harry said they were not talking about the outside spaces like the porch. Janice said the
50 Building Department gives a permit for the square footage amount for the footprint of the
51 building which includes the porch. Janice asked the applicant if it was an enclosed porch.
52 Steve confirmed the porch had a roof over it. Janice said they would have received a building
53 permit for the building plus the square footage of the porch. Basically, anything they had to
54 get a building permit for they can be replace. Harry said he knew that and said the DES wants
55 to know what the outline of the building is at the roof, not the foundation, not the piers but the
56 roof, that is the square foot of the building. Janice commented that the only reason they were
57 removing the porch is because they DES said they had to. Harry said that removal of the
58 porch was not really a concern, he was more concerned with the overall impact to the site.
59 Janice clarified that she was just added to the board's knowledge. Harry said he appreciated
60 that but, in terms of the public interest the property owner has reasonable rights to
61 replacement of the building. If it impinges on the public benefit, then the board has to make a
62 decision. Janice said she understood.

63 Harry said they are building closer to the road by approximately 2 feet. He was concerned that
64 when Steve parks his car it will be in the public right-of-way. Harry said the road goes on for
65 miles. Although, there isn't a lot of density, the road does service a lot of people. The Chair
66 asked Harry if removing the shed would help? Harry said knowing the shed is gone, which is
67 a non-conformity of this lot and could be a condition of approval, that makes a big difference
68 to him. Harry added it is a place to park the applicant's car.

69 Steve said he would commit to that (removal of the shed) for the record. He was just going to
70 use it to store tools and materials while working on the house. Harry said having the shed not
71 there and a car park is a great benefit to the public. Tony said they would accept that as a
72 condition and reflect it on the plan, when resubmitted as a final plan.

73 Beverley asked Harry if he has been by the property, commenting that it is a shack. She said
74 it is a real eye sore for the neighbors and she has seen children playing there in the
75 summertime. It has been empty for years and is not safe.

76 Allison continued with responses to the criteria. (Attached)

77 The Chair referenced a document and asked if the new building will be 2-feet closer to the
78 road instead of 5.8 feet. Allison said it is going to be 5.18 feet closer to the right-of-way. Tony
79 added including the overhang. Janice asked what is the distance between the overhang of
80 the roof and the property line. The Chair reference the plan which stated they the setback
81 from the property line adjacent to the road is going to 5.5 feet.

82 The Chair asked if there was anyone with questions on Zoom. Janice said we do have
83 someone attending, but, no comments or questions.

84 Harry said he appreciated what the applicant was doing and one thing he was concerned
85 about was the water quality of the pond. He is an architect, and he went through the
86 stormwater management documentation and could not quite make sense of all the charts and
87 graphs. He would like to know what the total run-off from the roof for each side in a 10-year
88 storm was. Also, what is the capacity of the infiltration trenches. It looks like there is a foot-
89 and-a-half on each side of the building, for a total of 42.

90 Allison said each drip edge had 432-cubic-feet of storage in the stone. Harry asked if the 432
91 cubic feet was the cubic volume of the stone and was that the capacity? Tony said it
92 accommodated in terms of flow, 3-cubic-feet (of water) per second. Tony said the storage
93 would be cubic feet in volume. Harry said so it was 432 cubic feet per second for each side of
94 the building. Allison said, yes. Harry asked what was the runoff they were trying to manage?
95 He knows some of it will infiltrate and some will be stored. He was concerned that the capacity
96 matches. Beverley said at the moment the building doesn't have anything and this will be an
97 improvement. Tony agreed they will be improving it, because now all the rainwater is just
98 falling off the roof. Tony checked his documentation and said the outflow is zero cubic feet per
99 second, all the water off the roof will go into the infiltration system. Harry commented that he
100 saw the zero number and it just didn't seem believable.

101 The Chair said the square footage of the building was 792, and suggested the second floor
102 should be included. Allison commented that there was a loft. Tony admitted the 792 square
103 footage should refer to the foundation.

104 Harry stated that the Town of Warner believes in energy efficiency. He read somewhere in the
105 application material they were building an unheated cottage. He doesn't believe that was in
106 the spirit of the town. It seems to him that insulation is cheap for a building built in 2023. The
107 Chair said it is a seasonal cottage. Harry said maybe the owner could build the cottage in an
108 energy efficient way. Tony said it will be insulated.

109 Lisa Wienckoski, living at 53 Pleasant Pond Road, commented to the board that abutters were
110 notified about this case after seasonal residents had left the area. It was almost like it was
111 planned that abutters were notified after September.

112 Tony said obviously there is a notification requirement that had nothing to do with occupancy
113 but with ownership. An abutter's list came from the town then abutters were notified. This had
114 nothing intentionally to do with the wintertime.

115 Lisa said she thought it was convenient that notification came after seasonal renters were
116 gone. The Chair said renters wouldn't get notified, only owners.

117 Janice said she sends out the notifications once an application has been received. When the
118 application has been received there is 10 days to notify the abutters. The board had a hearing
119 and decided there weren't enough abutters notified. Then abutters in the campground and the
120 mobile home park were notified. The case was not heard until that process was complete, two
121 months later. The legal obligations of notification was met before holding a hearing where all
122 abutters had a chance to participate in the process. Janice said any problems with addresses
123 can be corrected with the Assessing office.

124 Lisa said the issue was not with the notification, but with the timing of the application
125 submission.

126 Tony and Lisa got into a heated discussion and the Chair reminded them to address all their
127 comments through the Chair, not to each other.

128 Lisa said the house will be moved back two feet or 5.5 closer to the road. Lisa appreciated
129 the board bringing up the parking on the property. In the past an RV has been parked on the
130 property. There are children that go from the fishing area on one side of the house to the
131 beach area on the other. Lisa asked the board that if the shed is removed that there is
132 adequate parking for two cars to park side by side. Also, to include at least 9 feet per vehicle.
133 Lisa continued to say there is a quarry further up Pleasant Pond Road and the trucks that
134 come down the road are massive and drive by every 15 minutes. Children walk along the road
135 from the fishing area to the beach area, causing a concern.

136 Beverley suggested Lisa speak with the owner of the park and suggest a sidewalk be placed
137 on the other side of the street. Lisa said she could absolutely ask Peter, who owns the
138 property.

139 Tony said the shed is approximately 10-feet high by 20 feet. So, that is enough room for two
140 cars.

141 Harry said the doorway on the house is on the South side. Tony agreed. Harry asked if they
142 could park a car over the septic tank? Tony said, absolutely. Harry said cars could be parked
143 on either side, which would get the cars off the road. Tony said the shed side of the property
144 would easily fit two cars.

145 Janice said it may be useful for the board to know, is there anything unique to this property
146 that makes it, so the house has to be built closer to the road and not expanded in another
147 direction. For instance, extend the house in another direction potentially on the shed side of
148 the house. Tony said because of the shape of the property, which arcs along the water, any
149 where they expand the building would bring the structure closer to the pond. The building was
150 centrally located on the widest part of the property.

151 Harry said to do the parking they will have to grade it to level it out. Harry wondered if a
152 retaining wall would be necessary. Tony said there would be a little bit of a slope, he doesn't
153 know if a retaining wall would be necessary. Tony said they would cut the space in and pitch
154 it away from the pond. Harry clarified they would make it level with a steeper descent. Tony
155 said they could make that a condition.

156 The Chair closed the public hearing at 7:30 PM.

157 The Chair said when considering this variance she looked at how unique this property is. She
158 had looked at lots on Pleasant Pond and on Tom Pond. On Pleasant Pond there are 27
159 nonconforming lots and only two are conforming. There is one lot that is the same size as this
160 lot and all others are bigger. On Tom Pond there are 33 nonconforming lots and 2 conforming.
161 So, finding unique characteristics that allow this variance are important. The board could be
162 in a position where a whole lot of people could potentially be looking for a similar exclusion of
163 their houses. The applicant has the right to build on the same footprint. They are moving
164 further away from the pond which is desirable. They are going to take care of the runoff the
165 taller building.

166 Jan G. said they are removing the shed which is encroaching on the road.

167 The Chair said the lot will feel like a more conforming configuration than currently. The Chair
168 asked the board if they would like to go through each of the criteria.

169 Jan G. suggested they take it as a whole thing. She commented that there is a nonconforming
170 lot and now they are going to change it, and asked how is it better. Jan G. listed potential
171 improvements; the drainage, the removal of the shed, the parking tipping away from the pond,

172 the removal of the dilapidated building that is a safety hazard. Jan G. said it passed the test
173 for her. They have taken a nonconforming lot and upped the value of the conformability, even
174 though it could never be conforming. Beverley agreed.

175 The Chair asked if they felt all five criteria had been met. Jan G. and Beverley concurred.
176 Harry asked if we were going through the criteria and the Chair said they usually do.

177 **Public interest:** Harry said his concern with this was mostly due to the right-of-way and
178 distance from the road. Also, infringement on the road and the safety concerns, mostly
179 because of the parking. The owner and the engineer have solutions that involved taking down
180 the non-conforming shed which is an eye sore and over the property line. This goes a long
181 way to substantially satisfy him in terms of the public benefit. There could be parking for the
182 property conveniently on either side of the house. The Chair agreed. Harry said the entire
183 structure is within the 50-foot setback of the pond and within the 40-foot setback of the road.

184 **Spirit of the Ordinance:** The Chair said the neighborhood isn't going to be any more dense.
185 Harry said our ordinances spirit allows property owners to use their land as long as their
186 private benefit doesn't hurt the public benefit, severely. So, if this property owner can build the
187 house in a way that a nonconformity is eliminated, then it is more nearly conforming even
188 though it is bigger, because the shed is coming off the property. Making a place for parking is
189 within the spirit of the ordinance.

190 **Substantial Justice:** The Chair thought the answer to spirit of the ordinance also answered
191 substantial justice, as well.

192 **Diminished Values:** The Chair said rehabilitating the property and removing the
193 nonconforming shed adds to the value. Treating the run-off from the building and adequate
194 parking adds to the value. Harry said having someone build something brand and taking care
195 of it speaks to not diminishing the value of surrounding properties.

196 **Unnecessary Hardship:** The Chair said the shape of the property constrains what can be
197 built. Harry believes we had zoning in 1969. He did not know when this building was built.
198 Harry said the building potentially existed long before zoning regulations and the lot was built
199 before then and is nonconforming. Harry said it was a text book example of hardship. The
200 entire structure was within the shoreline of 50 feet and within the setbacks of the road. The
201 Chair said any expansion of the structure, on the shed side of the property, will bring it closer
202 to the pond, which is not desirable. Harry said the only advantage the property has was the
203 building exists. Harry wondered what was a reasonable expansion. The building is 14-feet
204 wide, and the addition of a stairway would take up 3 feet, then it would be only 10-feet wide
205 which Harry believed was narrow.

206 **Harry Seidel made the motion to grant a variance to Article VI.C.1. for the property on**
207 **Map 26, Lot 25 in the medium density R-2 zone (district) for construction of the**
208 **structure as shown on the Keach-Nordstrom site plan, dated November 28, 2022,**
209 **Project 21-0641-3 and revised for conditions:**

- 210 1. Removal of the nonconforming shed.
211 2. Off-road parking built and pitched away from the pond for two 10' x 20' foot parking spots.
212 3. That they meet all shoreland impact and wetland permit conditions per the NHDES permit.

213 The Chair asked if there will be a new plan. Tony said they will provide that and put a revision
214 date on the plan.

215 Janice asked if there was way the board could tuck into the motion the granted setback
216 measurements, of 5.5 feet. The Chair said it was on the table on the plan. Janice said the
217 Building Department would need the setback measurement of 5.5 feet from the right-of-way
218 for the permit. The Chair said 5.5 feet from the property line. Jan G. noted that was from the
219 roofline to the property line as opposed to from the foundation.

220 The Chair referenced the motion for a 792-square-foot structure, she noted that was the
221 square footage of the footprint. Janice said we don't really care about the square footage.
222 They must be a certain amount of feet away from the pond per the DES and the board is
223 allowing them to be 5.5-feet setback from the property line, that contains the footprint of the
224 building. Janice said the board doesn't do square footage. Harry said they do not have to say
225 the setback of the building if they reference the drawing. The Chair said the Building Inspector
226 is going to get this. Janice said the inspector does not get the applicant's plan that was
227 submitted to the board. The Chair said the Building Inspector doesn't have a plan? Janice
228 said the board tells the Building Department (through the decision notice) the setback amount
229 that was allowed. Originally the building permit was denied because they were encroaching
230 on the setbacks. The letter to the board identified the encroachment and stated the applicant
231 would need relief from the ordinance.

232 The board rewrote the motion and conditions which are stated above in revised form. The
233 board decided to add the DES permit update stipulation in the conditions. Janice clarified the
234 Planning Board was copied on all shoreland permits.

235 Janice asked if the 5.5-foot setback was going to be noted in the motion. The Chair said, no, it
236 will be noted on the plans. Janice said alright, but it will have to be in the decision.

237 The Chair read the above final version of the motion and conditions.

238 **Seconded by Beverley Howe. Discussion:** None. Roll Call Vote: Beverley Howe – Approve.
239 Harry Seidel – Approve. Jan Gugliotti – Approve. Barbara Marty – Approved. **Roll Call Vote**
240 **Tally:** 4 – 0. The board approved the variance for setbacks for Map 26, Lot 25, 30 Pleasant
241 Pond Road.

242 The applicant and their civil engineers withdrew from the meeting.

243 The Chair said the board needed to write the findings. Janice said the applicant probably
244 shouldn't have left the meeting. The Chair said the findings are like writing the decision. Janice
245 said when the board previously laid out responses to the criteria, they had their findings. The
246 Chair said the training by the Office of Planning and Development on the 16th of February said
247 that boards should vote on their findings. She said they could vote on them individually or as
248 a group. Janice suggested the Chair's comments on nonconforming properties on Pleasant
249 Pond, Tom's Pond, and comments about the right to build on the same footprint, a dilapidated
250 building, managing runoff, all of those items seem like a good start for facts and findings.

251 The Chair had the board go through the facts. Harry said aren't the facts in the minutes. The
252 Chair said they are but, that is no longer sufficient. Jan G. said they just have to summarize
253 and recount each finding of fact and say, "aye." The Chair concurred.

254 Janice reminded the board the Planning Board do not have the criteria the ZBA has for a
255 litmus test on an application. Harry didn't understand why they had to go through it again. Jan
256 G. suggested they have very good verbiage in the minutes, which just has to be distilled by
257 someone into a couple of sentences. Jan G. would volunteer to do that. Then next time they
258 have a meeting they can vote on each one. The Chair said the minutes and the Decision has
259 to be filed within five days. Jan G. asked if voting on each criteria has to be filed at the same
260 time. Janice said when she writes the decision she listens to the Zoom recording and she
261 pulls out the five criteria as stated by the board. Janice said you already have those findings
262 of facts within the criteria responses. The motion is the boards overall voting on the case in
263 totality. Jan G. said showing how they vote individually on the five points and if that doesn't
264 have to be filed on the same day then that would be less complicated.

265 Janice said in the past the board has had complex cases, the board has gone through the
266 criteria and made their decision. Then one member of the board is assigned the task of
267 composing findings of fact, they gather that information from tapes and minutes of all the

268 hearings on that one case, write it up and bring it back to board for voting. Harry said it is more
269 complicated than it needs to be, we must have findings of fact, a decision, and the minutes.

270 **Facts and Findings:**

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

272 The removal of the shed is going to bring the property more into conformity than currently
273 is. Providing off street parking eliminates the safety concerns.

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

275 Proper drainage will be installed to protect the pond. Reasonable expansion of a
276 nonconforming building is being allowed.

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

278 The property is so restrictive with the setbacks due to the shape of the property.

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

281 The pond will be protected. A dilapidated structure which is a safety hazard will be
282 replaced.

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

285 Reasonable use of the .016 acre lot pre-exists zoning (nonconforming lot of record) and
286 is constrained by the pond and road setbacks.

287 **Roll call vote on the fact of findings.** Beverley Howe – Approve. Harry Seidel – Approve.
288 Jan Gugliotti – Approve. Barbara Marty – Approve. **Roll Call Vote Tally:** 4 – 0. The board
289 approved the facts and findings for case 2022-06 an approval of a variance for setbacks for
290 Map 26, Lot 25, 30 Pleasant Pond Road.

291 **3. REVIEW OF MINUTES OF PREVIOUS MEETING:** February 8, 2023

292 The board reviewed the minutes of February 8, 2023. **Harry Seidel made a motion to accept**
293 **the minutes as amended for February 8, 2023. Beverley Howe seconded the motion.**
294 **Discussion:** None. **Voice Vote Tally:** 4 – 0. The minutes of February 8, 2023 were approved
295 as amended.

296 **4. UNFINISHED BUSINESS**

297 A. Rules of Procedure Document (ROP)

298 There was a discussion as to whether or not the board is required to vote on Findings of
299 Fact. Janice was going to check the OPD training of February 16, to verify. Harry said the
300 voting on findings of facts give the board protection if someone takes the board to court.
301 The Chair said that if a case goes to court and there is no findings of fact the court will rule
302 in favor of the plaintiff. Janice said there are a lot of towns that do not go through and
303 respond to the criteria. Also, there are towns that do not put that in their decision.

304 Harry looked at the courses that were available on the OPD site, there is an understanding
305 that property owners have reasonable rights. Also, that It can be unreasonable to demand
306 adherence to a zoning regulation.

307 **5. COMMUNICATIONS AND MISCELLANEOUS**

308 Janice said if the board decides they want to start requiring plans with certain applications,
309 there are some requirements that need to be met. She said the Planning Board has a Site
310 Plan Regulations document. They have specifics of what they want on every plan. If this is
311 something the board wants to start doing for variances, you would need to come up with
312 criteria you want on the site plan and it would have to be signed a specific way and stamped
313 and done by a licensed surveyor. The Chair shared a handout from the OPD which stated that
314 a plot plan is recommended as part of the ZBA's application. Also, it states that the plot plan
315 should be retained on file as a reference.

316 Beverley asked a site plan was for a new structure on a lot, or for anything. The Chair said
317 the OPD states the lack of a plot plan could result in a delay or misunderstanding of the written
318 record. The Chair said if it was important for a decision to know exact measurements there
319 should be a plot plan. Harry said that was asking for an existing conditions plan, which he has
320 done. Harry said that was probably a \$1,000 to \$2,000 investment. The Chair said the OPD
321 says because it was expensive, there needs to a judgment on when you need it. Harry said
322 an existing plan could be a possibility. Beverley said it has to be up-to-date and dated. Janice
323 said in a variance they are doing something different to the property, she would argue it may
324 be overkill for some special exceptions. The Chair said we do need to know where the lot line
325 is.

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

327 **Beverley Howe made a motion to adjourn the meeting. Harry Seidel seconded the**
328 **motion. Voice Vote Tally: 4 – 0.** The meeting was adjourned at 8:53 PM.

/jll