



TOWN OF WARNER

P.O. Box 269, 5 East Main Street

Warner, New Hampshire 03278-0059

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Zoning Board of Adjustment NOTICE OF DECISION

Date of Decision: August 26, 2026

Application for a Variance

Case: 2026-02-a

Applicant: Sydney E. Boyer

Agent: Attorney Laura Gandia

Address: 70 Split Rock Road

Map/Lot: Map 31, Lot 48

District: R-3

Details of Request: Application to construct a single-family residence on a non-conforming lot with insufficient frontage and a contiguous lot. Proposal to use frontage on a right-of-way across Map:31, Lot 51 Article XV A. 2. a

Article XV states:

- A. Non-Conforming Lots: 1. Any lot with less buildable area or frontage than required in the district, which is lawfully established, recorded, and taxed as a Lot of Record before the enactment or amendment of this ordinance, shall be deemed a non-conforming lot. 2. Such lots may only be built on, for residential purposes, if **(a) the owner of the lot owns no contiguous land**, (b) it has at least 80% of the required frontage for the district, (c) the lot is able to sustain a state-approved waste disposal system or connect to municipal sewage and (d) any proposed construction is able to meet the district's applicable setback requirements.

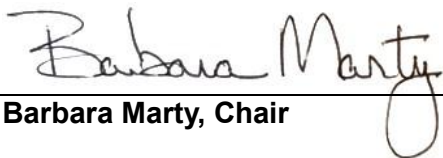
The property is a non-conforming lot, and the owner of the lot owns contiguous land. The Applicant desires to build a single-family residence on the non-conforming lot, and therefore the Applicant sought a variance from Article XV, A, 2 (a).

You are hereby notified that on August 26, 2026 the Zoning Board of Adjustment voted to **DENY** a variance to the terms of Article XV, A., 2., a. concerning contiguous land by a vote of 5-0.

The Board's decision to deny the variance was based on the following findings of fact and consideration of the five variance criteria established in RSA 674:33.

1. The Applicant proposes to use a 25-foot Right of Way over property which is owned and used by the Warner School District for the elementary school. The ROW runs over the School District property to Kearsarge Mountain Road.

2. While the property is “landlocked” the Applicant owns contiguous land, which has sufficient road frontage, and was previously used as egress to the road for both lots when logging. These two lots were purchased on a single deed.
3. The Board found that the Applicant failed to meet its burden on criteria 1, “the variance will not be contrary to the public interest; & 2, “The spirit of the ordinance is observed.” The Board found that the public interest and spirit of the ordinance is exactly why the ordinance contains this condition. Applicants should first look to the existence of a contiguous lot when considering a non-conforming lot for residential purposes. Using the contiguous lot to alleviate a factor of non-conformity is a valid and important condition in the ordinance. Using the contiguous lot for frontage removes concerns for health and safety due to overcrowding the roadways in that neighborhood and over to the elementary school property.
4. The Board found that the Applicant failed to meet its burden on criteria 3, “substantial justice is done.” Substantial justice is served by denying this variance because the owner had/has options to use the contiguous lot to address conditions of the non-conformity and provide access for frontage to serve the otherwise landlocked lot.
5. The Board found that the Applicant failed to meet its burden on criteria 4., “the value of surrounding properties are not diminished”. The surrounding properties, especially the Kearsarge School District, could be spared any diminished value and expense if the owner uses the road proposed on the contiguous lot subdivision plan, to provide access to the lot in question and mitigate any negative financial impact to abutters.
6. The Board found that the Applicant failed to meet its burden on criteria 5, “unnecessary hardship.” This property is unique in that the owner has a contiguous lot with frontage that could serve both lots. The frontage on the contiguous lot has been used by successive, and the current owner, to access lot 31-48 for logging. By dismissing using the existing access across the contiguous lot to access lot 31-48 the Applicant created their own hardship.



Barbara Marty, Chair

9-1-2026

Date

Warner Zoning Board of Adjustment Note: The New Hampshire RSA 677:2: provides that the Board of Selectmen, 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 with the Town Clerk and in the records of the ZBA.

