



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-b

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. Proposal to use frontage on a right-of-way across Map:31, Lot 51 Article XV A. 2.b

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, with less than 80% of the required frontage for the district. 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 (b).

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., b, to allow a 25-foot frontage where 200-feet is required 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 Right of Way runs over the School District property to Kearsarge Mountain Road. The ROW is in close proximity to the school building and shares access across the bus turn-around. The current ROW has never been used.

2. While the property is “landlocked” the Applicant owns contiguous land, which has sufficient road frontage. Both parcels were sold on the same deed. The Applicant has since filed a subdivision plan for the parcel with frontage.
3. The Applicant indicated there had been conversations with the School District, but no agreements have been reached at the time this application was submitted
4. The Board found that the Applicant failed to meet its burden on criteria 1. “The variance will not be contrary to the public interest”. The public interest, including health, safety and welfare, will be negatively impacted by such an extreme departure from the required frontage. The character of the neighborhood will suffer from overcrowding the road way.

The steepness and narrowness of the right-of-way across the playground and within feet of the school building presents health issues including from noise, fumes and vibration of vehicles in addition to safety concerns that arise from plowing and drainage across a steep slope. If granted the frontage variance would exacerbate these conditions by allowing more traffic through a narrow frontage. It would also cause safety concerns from the travel of dump truck, cement trucks, and other building related vehicles through the ROW in close proximity to the elementary school.

The Board also found that this is a substantial departure from the 200-foot frontage requirement, down to the 25-feet the Applicant is proposing, and may cause difficulty for safety vehicles.

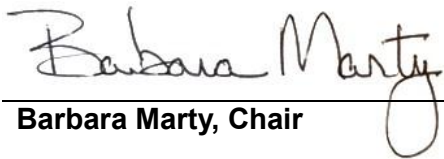
5. The Board found that the Applicant failed to meet its burden on criteria 2, “the spirit of the ordinance is observed”. The spirit of the ordinance is to uphold a safe and orderly distance between properties and maintain the existing character of the neighborhood. This excessive request for a 25-foot frontage variance is contrary to that spirit.
6. The Board found the Applicant failed to meet its burden on criteria 3, “substantial justice is done”. Substantial justice is done in denying the variance because the owner still has access to the lot to enjoy the property and to harvest timber. The gain to the public in maintaining the character of the neighborhood and avoiding safety issues far outweigh any potential loss to the applicant.
7. The Board found that the Applicant failed to meet its burden on criteria 4. “The value of surrounding properties are not diminished”. There was testimony that this variance would have negative financial impacts on the school property over which the right-of-way crosses. The additional expense for fencing, runoff mitigation, and bus turnaround reconfiguration was all presented.
8. The Board found that the Applicant failed to meet its burden on criteria 5, “unnecessary hardship.” The Applicant would not suffer an unnecessary hardship nor is this property inherently unique.

Other properties in this geographical area are landlocked and used as productive wood lots.

The property was purchased with two lots on the same deed and the existing conditions and limitations of each lot known to the buyer.

The lot has been used historically, and by the current owner, for harvesting timber and can continue to be used for the same purpose.

The contiguous lot, which has road frontage, is still owned by the applicant and the subdivision of that lot without acting on the consideration to create access to lot 31-48 is a self-created 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.