



TOWN OF WARNER
P.O. Box 265, 5 East Main Street
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
Email: landuse@warnernh.gov

Zoning Board of Adjustment

Wednesday, August 13, 2025 7:00 PM

Town Hall Lower Meeting Room

I. OPEN MEETING and ROLL CALL

The Acting Chair Derek Narducci called the meeting to order at 7:00 PM.

Board Member	Present	Absent
Sam Carr (Alternate)	✓	
Jan Gugliotti	✓	
Beverley Howe	✓	
Barbara Marty (Chair)		✓
Lucinda McQueen		✓
Derek Narducci (Vice Chair)	✓	
James Zablocki (Alternate)	✓	

James Zablocki and Sam Carr were elevated to voting members. Vice Chair Narducci asked if anyone had any conflicts of interest, no one expressed a conflict.

II. NEW BUSINESS:

A. **Application:** Appeal of Administrative Decision - Public Hearing

Case: 2025-7 Applicant: Peacock Hill Rd LLC

Owner: Peacock Hill Rd LLC

Address: Route 103 East

Parcel: Map:07, Lots 39 and 39-1

District: R-2 and R-3

Description: Application appealing the Town of Warner Land Use interpretation of buildable area calculation. Warner Zoning Ordinance Article II. C. 2., and Article III Definitions: Buildable Area

Jan Gugliotti stated that the appeal relies heavily on legal arguments that the Board is not prepared to understand and evaluate whether their interpretation is correct. She suggested the Board ask for a continuance until the Board receives a legal opinion. *Audio Difficulties* Bev Howe agreed.

Jan Gugliotti made a motion to continue without prejudice agenda items 1, 2 and 3 until the next meeting. No second was made. Chrissy Almanzar explained that without hearing the presentation she would not know what specifically to ask legal counsel. Derek Narducci explained that he would prefer to table the motion until after the presentation. He further clarified that item #3 is a simple vote, no presentation will be heard. The Board will vote on whether or not they want to rehear the CATCH application.

Chrissy Almanzar informed the Board that this was properly noticed, and fees have been paid.

James Zablocki made a motion seconded by Sam Carr to accept the application as complete. Motion passed unanimously.

Attorney Leino of Bernstein Shur law firm and Jason Lopez from Keach Nordstrom addressed the ZBA. Jason Lopez explained that the property was subdivided into three lots. He explained that one lot was created for a single family home and the other two lots are proposed to be two 4-unit multi-family homes. He explained that during the Planning Board review, questions were raised about the buildable area calculations and whether or not it complies. Jason Lopez stated that the Land Use office reached out for a legal opinion. He explained that they dispute the opinion. He feels that there are multiple areas of the zoning ordinance that when it is reviewed in whole, creates a different picture on how to calculate buildable area.

Attorney Leino addressed the legal opinion of the town's attorney. He stated that if the rule of reason is applied to this it creates an absurd result. He stated that it essentially says that because they have lots in two different zoning districts, the Town is saying they cannot do anything with the back parcel. He reiterated that it is an absurd result because they meet the density requirements in either zone.

Jason Lopez explained that in the calculations they utilize the buildable area in both R-2 and R-3. He stated they applied the calculations appropriately for each zone. Jason Lopez stated that they do comply with the statement from Warner's Zoning Ordinance, "(...) each zoning district shall remain for each corresponding area."

Attorney Leino stated that it is not appropriate for the Town to say that buildable land in the R-3 zone cannot be calculated into the lot's buildable area.

Jason Lopez spoke to what he feels the question comes down to: buildable area. He stated that the zoning ordinance article III defines buildable area as the total acreage of the parcel or lot. He stressed that it does not mean to look at individual districts separately. He reiterated that they applied the R-2 numbers to the R-2 portion, the R-3 numbers to the R-3 portion, they add the two numbers together and that is what the lot can handle. He stated that a town would establish buildable area restrictions for septic systems. Jason Lopez explained that the underlying intent of the buildable area is driven by proper lot loading for sewer capacity. He explained that the ordinance directs them to look at the entire parcel for buildable area calculations.

Jason Lopez explained that lot 39 has more area in R-2 and lot 39-1 has more area in R-3. He informed the ZBA that the parcel they created could hold a total density of 5.2 units. He acknowledged that the ordinance limits the number of units to 4 or less. Jason Lopez stated that lot 39-1 calculates to 6.1 giving them enough buildable area for 6 units but the ordinance limits it to 4 units. He explained that in total the buildable area between the two lots would permit 11 units based on the buildable area calculations. Jason Lopez stated that they are proposing 8 units.

Attorney Leino noted that there is a housing crisis in New Hampshire. He stated that his client is trying to provide the town with additional housing in a way that is consistent with the Town's ordinance. He stressed that if the buildable area is calculated correctly, considering the Zoning ordinance as a whole, his client is looking to get less density than what the calculation allows.

Jason Lopez stated that in the Warner Master Plan 2024 update, Chapter 4 Housing, Section 4.10 discusses "next steps" and it calls for the zoning ordinance to be reviewed to allow greater density where appropriate. He explained that it calls for the streamlining of the permitting process and the review of the zoning ordinance for excessive restrictions, redundancies and inconsistencies. Jason Lopez stated that this is the exact lack of clarity they find themselves in now. Bev Howe noted that the ordinance says if no building is proposed in the R-3 portion of the lot, it may not be factored into the calculation of the buildable area. Attorney Leino stated that they believe that is in direct conflict with the buildable area

definition. He read the zoning ordinance article III definition of buildable area; “buildable area means total acreage of the parcel or lot”.

Sam Carr asked if there is precedent outside of Warner that supports the prorated approach. Attorney Leino stated that he spent some time looking at other town’s ordinances pertaining to lots in two zones. He stated that the Town of New Boston ordinance says whichever lot has more frontage is what the entire lot is classified as. He noted that other towns use more area, others use the more restrictive of the two zones and another town allows for the zoning line to be moved 30 feet. Attorney Leino explained that if it is read the way the Town’s counsel is proposing, rather than a statutory whole and creating an opportunity to build medium density (8 total units on 34 acres), it is essentially wiping out half the lot as though his client doesn’t own it. Attorney Leino claims that cannot possibly be the way this statute should be interpreted.

Bev Howe stated that it does not matter what other towns are doing, Warner does not allow it. She stated that it is not an interpretation, it is the way the ordinance is written. Jan Gugliotti reiterated that this is why the Board should have continued this hearing until they consulted with the town’s legal counsel. Jason Lopez stated that it is not their intent to say the Board is making bad decisions. He clarified that they have read the zoning ordinance as a whole and the interpretation cannot come from just the one sentence. He appreciates the opportunity to have this hearing to present their interpretation of the ordinance. He explained that there is language in the ordinance that clearly needs to be corrected. He stated this is the proper body for the applicant to come to for this discussion.

Jason Lopez stated that he does not see the conflict between the buildable area definition and language in the zoning ordinance that describes how to treat lots. He feels that it is important that the town’s legal counsel review the ordinance as a whole not just one sentence.

Bev Howe questioned why the Planning Board would send this to the ZBA. Jason Lopez explained it was because of the ambiguity of the ordinance and the ZBA is the appropriate local body to resolve the issues. He spoke about how the prorated calculation comes into play when dealing with the State of NH DES subsurface requirements.

Vice Chair Narducci opened the floor to abutters.

Dan Richardson stated they are attempting to put two four unit buildings on an unbuildable lot by combining the buildable area. He explained that the properties in the area are private single family homes. He stated that this proposed development is for a single family home and two quad units in a spot that cannot hold it. Dan Richardson stated that there has been a terrible water runoff problem with that property.

Nathaniel Burrington believes that they are lot-loading R-2, and they should be pushed to R-3. Mr. Burrington stated that the buildings do need to be pushed back to reduce the lighting disturbances.

Vice Chair Narducci opened the floor for public comment.

Andy Bodnarik spoke about the saving clause in the ordinance. He explained that the saving clause was designed to address when there are conflicts between any two parts of the ordinance. He read the saving clause “*The invalidity of any provision of this ordinance shall not in any way affect the validity of any other provision*”. Mr. Bodnarik explained that the question as to whether the ordinance itself or parts of the ordinance itself are invalid. He agreed that the Board needs legal advice and he urged the Board to ask town counsel the questions that the applicant raised. He cautioned how the Board words their

questions. He explained that it is the Planning Board who would bring ordinance revisions to Town meeting for approval. Mr. Bodnarik stated that as it relates to the Master Plan, it is the Planning Board who must approve changes to the text of the Master Plan, and that has not yet been officially done. Mike Smith expressed his disappointment with the removal of the trees. He stated that the buildings will be in plain sight. Mr. Smith raised his concerns relating to the access for the Fire Department. He stated that he has concerns regarding noise pollution.

Don Lassonde explained that he is an abutter to the property and he experiences significant runoff from the property. He expressed concern regarding the impact on his well and septic system.

Vice Chair Narducci closed the public comment and asked for closing statement from the applicant.

Attorney Leino explained that a lot of the questions raised are questions for the Planning Board. He stated that this will go through a full site plan review and things like culvert improvement will be vetted out during the site plan review. He acknowledged they are all valid concerns that will be part of the Planning Board's review. Attorney Leino also acknowledged that the area is primarily single-family homes, however, what they are proposing is allowed by right in R-2 and in R-3 would require a special exception.

Vice Chair Narducci closed the public hearing and opened the floor to discussion from the Board. James Zablocki explained his perspective is in agreement with the applicant.

Sam Carr stated that he still sees two conflicts in the zoning language regarding two different zones versus the two different requirements. He questions the buildable area calling for the total acreage. Sam Carr stated that the buildable area definition is very clear that it uses the total acreage of the lot. He suspects that the legal counsel's interpretation gives more weight to the first clause regarding a split district. Sam Carr explained that he can see from the applicant's perspective that district division should not prevent them from the use of their land, including the use of calculating it in all the purposes of the land. He stressed caution in preventing them from being able to use a large parcel. He would like guidance from legal counsel.

Bev How stated that she has previously made her comments known. Jan Gugliotti echoed Sam Carr's statements. Vice Chair Narducci stated the applicant made a good case and would like a legal opinion from town counsel.

Jan Gugliotti made a motion seconded by Bev Howe to continue this case to the next ZBA meeting on September 10, 2025 at 7:00 PM and in the interim the ZBA will seek advice from town counsel.

Discussion on the motion

James Zablocki questioned if a month is enough time to receive an opinion from town counsel. He suggested holding a work session in two weeks to discuss as a Board. Jan Gugliotti stated that she will be out of town and suggested pushing back to October. Attorney Leino reminded the Board that the next agenda item is a request for a variance to the buildable area requirements. Vice Chair Narducci explained that both items would be moved. Attorney Leino suggested tabling the first request and allowing the next hearing.

Vice Chair Narducci would prefer to continue both hearings. The Board discussed meeting on September 3, 2025 to hold a work session.

Amended motion

Jan Gugliotti made a motion seconded by Bev Howe to continue this case to the next ZBA meeting on September 10, 2025 and to meet on September 3, 2025 at 7:00 PM for a work-session.

Roll Call Vote: Zablocki YES Carr YES Howe YES Gugliotti YES Narducci YES

B. Application: Variance - Public Hearing

Case: 2025-8

Applicant: Peacock Hill Rd LLC

Owner: Peacock Hill Rd LLC

Address: Route 103 East

Parcel: Map:07, Lots 39 and 39-1

District: R-2 and R-3

Description: Application for a variance to the buildable area requirements. Warner Zoning Ordinance Article II. C. 2., and Article III Definitions: Buildable Area

Sam Carr made a motion seconded by James Zablocki to accept the application for Peacock Hill Rd LLC Case 2025-8 as complete. Motion passed unanimously.

Vice Chair Narducci confirmed all fees have been paid.

Attorney Leino and Jason Lopez addressed the ZBA requesting a variance. Attorney Leino explained that the ordinance needs clarification. He quoted a NH Supreme Court decision (Beck v. Town of Raymond: *"Towns may not refuse to confront the future by building a moat around themselves and pulling up the drawbridge."*) Attorney Leino explained that he believes it is important to consider that the applicant has a large amount of acreage and taking the buildable acreage considerations, Map 07 Lot 39 has 8.77 buildable acres and Map 07 Lot 39-1 has 11.05 buildable acres. He explained that in terms of density, they are proposing less than what is acceptable under the ordinance.

Attorney Leino referred to RSA 674:33 and the criteria for granting a variance.

Public Interest: He explained that granting the variance will not be contrary to the public interest. He stated that a variance is contrary to the public if it alters the essential character of the neighborhood, threatens public health, safety or welfare. Attorney Leino stated that in this case neither of those standards is affected. He explained relating to health safety and welfare they have an opportunity to build something on large parcel of raw land where it is 275-300 feet back from the road with less density than the ordinance allows. He explained that they will go through the rigorous planning review to make sure that no one is negatively affected.

Spirit of the ordinance: Attorney Leino explained that as determined by case law, generally if an applicant meets the first criteria (does not alter the essential character of the neighborhood, threatens public health, safety or welfare) the applicant would meet the second criteria also. He stated that it is important to consider the language of the ordinance stating that the purpose of the R-2 and R-3 districts is residential use and planned growth in areas adjacent to the village center. He stated that the proposed development enhances those goals.

Substantial Justice: Attorney Leino stated that the Supreme Court has held that this is really a balancing test between a loss to the individual that it is not outweighed by a gain to the general public as an injustice. He explained that if the ordinance is interpreted that the applicant can only calculate the R-2 density and none of the R-3 towards the calculation, it would essentially wipe out the bulk of the property. He asserted that this would be an injustice. Attorney Leino stated that to walk the property, there is buildable acreage that should be counted in some way towards what they are proposing. He stressed not to do so is an injustice.

Value of surrounding properties: Attorney Leino stated that by granting the variance, it will not diminish the value of the surrounding properties. He reiterated that the building will be set back from the road.

Attorney Leino spoke to the abutters concern regarding the 300 apartments already in Warner. He does not believe that 8 condominiums will negatively impact the property values.

Hardship:

Attorney Leino explained the hardship they are facing is having two different zoning districts run through the property. He stated that none of the abutting properties are affected in this way. Attorney Leino spoke about the fair and substantial relationship between the general public purpose of the ordinance and the application to the property. He stated that to not allow this would unequivocally create a hardship. He noted that the proposed use is a reasonable use. He reiterated that what they are proposing is a density less than what conceivably could be calculated.

Attorney Leino explained that the applicant is trying to build a reasonable product that is going to provide attainable housing. He stated that they will be sold at market rate.

Jan Gugliotti asked that the concerns of the abutter be addressed. She asked if there is any defense for the actual criteria. Attorney Leino stated that the actual criteria is set forth in RSA 674:33 and he stated that he addressed those thoroughly. He stated that they understand and addressed the abutters concerns earlier and the concerns will also be thoroughly vetted in the Planning Board process. Attorney Leino reminded the Board that in order to get to the Planning Board they need this variance. He reiterated that the variance hardship is created by one reading of the ordinance as was previously discussed. He explained that applying it that way creates an unjust use of the property by the fact that it wipes out two thirds of the lot for calculation purposes. He stated that is the hardship.

Jan Gugliotti referred to the language, “(...) when granting the variance would alter the essential character of the neighborhood.” Attorney Leino explained that it refers to the variance, not the project. He stated that they are requesting a variance to be able to calculate the entire lot.

Sam Carr asked if the applicant was only able to use the buildable area on the R-2 portion, would that limit the applicant to a duplex in each lot. Jason Lopez explained that would limit them to 3 units on Map 07 Lot 30 and 1 unit on Map 07 Lot 39-1. Attorney Leino stated that in terms of density that would be 1 unit on 8.77 acres and three units on 11.05. He stated that in a housing crisis, that is an inefficient use of land, especially in a town with multifamily is allowed by right.

Sam Carr questions the applicant’s position that the property value of surrounding properties will not be diminished. He believes they would be impacted. Jason Lopez stated that he looked at the assessing records and did not find evidence that the property values went down after a development was built. Jan Gugliotti asked if the applicant would consider reducing the lighting and planting fast growing vegetation to conceal the property. Jason Lopez explained that there is a lighting plan and landscaping plan that has been presented to the Planning Board. He explained that they need a variance in order to proceed with the Planning Board. Attorney Leino asserted that this project is a benefit to the Town.

Vice Chair Narducci opened the floor to abutters.

-Nathaniel Burrington stated that as long as he has lived in the neighborhood there has been a good demonstration of Warner's ordinance. He suggested a condition of approval to be that there is no further building in the area. Nathaniel Burrington disputes that there is a housing crisis in NH.

Attorney Leino clarified that they are using their density calculations to be allowed, through a variance or the administrative appeal, to build the eight units (4 per lot). He stated that there is no more density to use.

Jason Lopez explained there was a previous version of this presented to the Planning Board as a conceptual plan (four lots with 12 units) but it became too costly.

-Dan Richardson stated that the previous version presented to the Planning Board was not to specifications. He noted the driveway did not make the grade, there were issues with the plan and that is why it did not make it through. Attorney Leino agreed, clarifying that they have come back with a better plan.

-Georgina Richardson asked for clarification on screening of the property with the abutters. James Zablocki called a point of order that would be a question best asked at the Planning Board review. Vice Chair Narducci agreed.

-Barbara Lassonde asked for clarification on the future plans for developing the back portion of the lot. Sam Carr explained that under current zoning requirements that would not be permitted because the density of the lot is maximized. Vice Chair Narducci agreed.

Vice Chair Narducci closed the public comment.

Attorney Leino stated that he appreciates the Board's consideration of the ordinance. He acknowledged that this is a thorny issue. He reiterated that this is a proposal for two 4-unit buildings. He stressed that there is a clear hardship for the applicant with the way the ordinance is being applied.

Vice Chair Narducci closed the public hearing. The Board began deliberating.

The variance will not be contrary to the public interest; Sam Carr questioned if this is contrary to the public interest because the basic zoning objective is to maintain the buildable area. He noted that to ignore the buildable area would be contrary to public interest and the spirit of the ordinance. He spoke about his concern relative to the impact on the surrounding property values.

Bev Howe stated that she entirely agrees with Sam Carr's concerns. She addressed the statement that the Town cannot pick and choose which permitted use it may allow on the property, she noted that in fact they can. Bev Howe stated that the applicant is here for a variance and the ZBA is not obligated to give it.

Jan Gugliotti agrees with Sam Carr and Bev Howe. She is concerned that property owners will see the relative value of their homes diminish relating to criteria #4.

James Zablocki stated that any time a housing development is built it affects the dynamics of the neighborhood. Sam Carr thinks it is a question of degree of the project and the impact. Derek Narducci explained that for him #1 Public Interest: comes down to the public interest in general and he does not see that granting the variance is contrary to the public interest. #2 Spirit of the Ordinance, he is in agreement with Sam Carr. #3 Substantial Justice: Vice Chair Narducci has not come to a decision on that criteria yet. #5 Hardship: Vice Chair Narducci agrees that there is a hardship relating to the zoning line running through the lot. #4 Value of surrounding properties: Vice Chair Narducci explained that the area is predominately single-family homes and he does not have a way to determine if the surrounding property values would be negatively impacted.

Jan Gugliotti spoke about the risks to the town (traffic, decrease in property values and quality of life) if this is granted, she acknowledged that there is a hardship but the risks are too great. Attorney Leino explained that every development is a risk. He asked why the ordinance allows for multi-unit buildings by right. Jan Gugliotti stated that it seems that there are other areas in town that could have been selected. She stated that it seems like they are forcing a round peg in a square hole. Jason Lopez stated that the public hearing was closed and he suggested reopening the public hearing. He has additional information to add. The Board agreed not to reopen the public hearing.

James Zablocki stated that the Board just went through the first proposal and the Board will eventually come back with a fuzzy answer about what they could do or not do because of the R-2 and R-3 districts. He acknowledged that it will not be clean and simple but the Board needs to get the additional information to decide how that works. He acknowledged that clarity in the ordinance is needed.

Vice Chair Narducci acknowledge that the variance would make the applicants first appeal of administrative decision moot. Jan Gugliotti reiterated her first motion was to table the discussions until they receive another legal opinion from Town Counsel. Bev Howe agreed. Jan Gugliotti stated that she would motion to continue a decision on the variance. Vice Chair Narducci agreed. James Zablocki asked the Board what clarification is needed regarding the variance. Jan Gugliotti would like to know if what has been presented is valid or not. Sam Carr stated that question relates to the spirit of the ordinance.

Jan Gugliotti made a motion seconded by Bev Howe to table the application for a variance on map 07, lots 39 and 39-1 until after the Board has clarified the question about R-2 and R-3 zoning districts and the density calculation until the September 10, 2025 ZBA meeting.

Ed Mical called a point of order that the audience cannot hear the Board's discussion. Vice Chair Narducci explained that a motion was made to table the application for a variance until the next meeting.

Motion passed 3-2-0, Carr and Zablocki voted in the negative.

C. Rehearing Request

Case: 2025-9

Applicant: Concord Area Trust for Community Housing (CATCH)

Owner: Comet, LLC

Address: Route 103

Parcel: Map: 35, Lot: 4-3

District: C-1, Intervale

Description: Request to grant a rehearing for 34-unit multi-family workforce housing.

Vice Chair Narducci explained that the Board will deliberate and decide if they want to grant a rehearing for 34-unit, multi-family, workforce housing. Bev Howe reminded the Board that they have previously had three meetings. Jan Gugliotti concurred and stated that there is no new information and she is inclined not to rehear it. She reiterated that a legal opinion is needed.

Sam Carr agreed that there has not been new information provided and he does not see a need to get a legal opinion not to rehear the case. James Zablocki explained that the applicant disputes the Board's statement of facts, it is not about the applicant presenting new information.

The Board reviewed the decision that was previously sent to the applicant. Jan Gugliotti feels that the Board's decision is solid. Sam Carr explained that the use is not necessarily the issue; instead, it is the project's scope and scale. He questioned if a rehearing would change that.

Andy Bodnarik called a point of order, he requested that Vice Chair Narducci state the name of the case that the ZBA is discussing. Vice Chair Narducci stated the Board is considering a request for a rehearing for Concord Area Trust for Community Housing (CATCH) case # 2025-5

Sam Carr made a motion seconded by Bev Howe to deny the request for a rehearing on Case: 2025-9 Concord Area Trust for Community Housing (CATCH) Map 35, Lot: 4-3(original case # 2025-5). Roll Call Vote Zablocki NO, Carr YES, Howe YES, Gugliotti YES and Narducci YES The vote passes 4-1-0 James Zablocki voted in the negative.

Discussion on the motion; Chrissy Almanzar asked if a Statement of Facts is in response to their arguments. James Zablocki confirmed. Chrissy Almanzar advised the Board that one of the applicant's arguments is that the Board's decision dealt with the size of the development and not the use. She asked the Board to give her clarification on how to respond to that. Jan Gugliotti stated that the Board does not need to respond to each argument they only need one solid reason. She referred to the safety issues, traffic, the lack of real data as opposed to averages from across the state, the threat to the Warner River and threat to wildlife and position of the town that the residents do not want that kind of housing especially on that lot. Chrissy Almanzar asked for clarification on how to respond to the use versus size argument.

Jan Gugliotti suggested the following response; *The negative impacts of the proposed use on traffic, public safety, noise, air quality, ground and surface water quality make this site an inappropriate use for a 34-unit, multi-family, workforce housing.*

III. REVIEW OF MINUTES – June 25, 2025

James Zablocki made a motion seconded by Vice Chair Narducci to accept the June 25, 2025 ZBA meeting minutes as amended. Motion passed unanimously.

Page 1 Line 34 insert build within the setbacks

Line 38 strike for public input and insert to continue public comment

Line 42 insert this portion

Page 3 line 102 strike to

Line 108 insert by special exception pursuant to the town zoning ordinance

Line 122 insert referenced the easement that the Town of Warner holds, strike the

Line 124 insert Chair of WRLAC

Line 133 workforce housing is permitted, without including the commercial zones

Line 132 strike requirements, insert requirement

Line 144 strike the view, insert visual impact

Line 147 strike will, insert is

Page 4 Line 162 strike sentence, insert The Chair asked for any additional comments. Hearing none the Chair called a five-minute recess.

IV. COMMUNICATIONS

Andy Bodnarik submitted a letter for the Board to read. Vice Chair Narducci thanked Mr. Bodnarik for his input. Ed Mical stated that Mr. Bodnarik's letter should have been made known to the public. There was a discussion with Ed Mical, Andy Bodnarik and the Board regarding following procedures to make detailed statements and motions during the meeting.

V. ADJOURN

Sam Carr made a motion seconded by Jan Gugliotti to adjourn the meeting. Motion passed unanimously.

Respectfully submitted by Tracy Doherty on 8/19/25