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September 24, 2026

VIA HAND DELIVERY
Zoning Board of Adjustment
Town of Warner
Five E. Main Street
Warner, NH 03278

RE: Motion for Rehearing - Zoning Board of Adjustment Case 2026-02

Dear Zoning Board of Adjustment members:

Enclosed please find the above referenced motion for rehearing. If there is anything else you need, please let me know.

Thank you.

Sincerely,

/s/ Laura J. Gandia

Laura J. Gandia

LJG/bm
Enclosures

TOWN OF WARNER
P.O. Box 269, 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
MOTION FOR REHEARING

1. Case Information

Case Number for original matter decided: 2026-2

Date of decision by the Zoning Board of Adjustment: 08/26/26

Date request submitted: 09/24/26

2. Requestor [Information about the person who is requesting the rehearing]

Name: Sydney Elizabeth Boyer

Mailing Address: 70 Split Rock Road, Warner, NH 03287

Property address: Kearsage Mountain Road (Map 31 Lot 48)

Phone: 603-715-6377 Email: aacc@comcast.net

You are:
[X] The original applicant, [ ] The owner of the property, [ ] The Warner Board of Selectmen, [ ] An abutter, or other party who was required to be notified of the original application

3.Rehearing Request
Applicant is requesting that the Zoning Board of Adjustment reconsider:
[ ] Its approval of the application, [X] Its denial of the application, or [ ] The conditions, restrictions, or modifications it imposed when it approved the application

Please describe the reason(s) for the request for rehearing, setting forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. (Attach additional sheets if needed)

See attached

PLEASE NOTE: An application for rehearing must be filed within 30 days of the decision. The decision to grant or deny a rehearing is made at a public meeting and not at a public hearing, so public notice is not given to applicants, owners or abutters, and the Board will not take any testimony from any party. Should the Board decide to grant a rehearing, the requestor filing this application shall be responsible for all costs related to the required application and fees for public notice. See also RSA 677:2 and RSA 677:3

STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY TOWN OF WARNER

ZBA CASE NO. 2026-2

Owner & Applicant: Sydney Elizabeth Boyer

Address: 70 Split Rock Road - Map 31 Lot 48

Request for a variance to Article XV, A.2

MOTION FOR REHEARING

NOW COMES Sydney Elizabeth Boyer (Applicant), by and through her attorneys, Devine, Millimet & Branch, P.A., who submits her motion for rehearing pursuant to NHRSA 677:2 and hereby specifies and sets forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable as follows:

1. The Applicant filed an application for two variances to Article XV, A.2 to allow the building of a single-family residence on a non-conforming lot where the owner owns a contiguous lot and the lot does not have at least 80% of the 125 feet of required frontage in the R-III district.
2. The Zoning Board of Adjustment (the "ZBA") held a hearing on August 12, 2026 on the application. Testimony was received from the Applicant's attorney and from a member of the Applicant's family as well as from school district administrators and others. The ZBA closed the public hearing and continued the meeting until August 26, 2026 to consult and seek guidance from the Town attorney on various issues raised during the meeting.
3. After the 8/12 and before the 8/26 meeting, the Applicant, through her attorney, submitted additional information to address the ZBA's concerns discussed at the 8/12 meeting. The Applicant was informed that the ZBA Chair stated that she was not accepting any additional information as she closed the public hearing and refused to consider the Applicant's additional information.

4. Prior to the 8/26 meeting, the Applicant's attorney emailed the Town of Warner (the "Town") a Motion to Reopen the Public Hearing to the Town to address the ZBA's concerns discussed during the public hearing.
5. Unbeknownst to the Applicant's attorney the person to whom the motion was sent "left for the day" and the ZBA was not in receipt of the motion. Luckily the Applicant's attorney had copies of the motion that was submitted to the Town and distributed to the ZBA Chair/staff prior to the commencement of the 8/26 meeting. The ZBA discussed the motion but prohibited the Applicant's attorney from speaking.
6. The ZBA denied said motion and the Applicant's two variance requests after a lengthy and confusing discussion.
7. After repeated requests for both the minutes and the notice of decision, the Applicant's attorney received the notice of decision on September 3, 2026 and the meeting minutes for both the 8/12 and 8/26 meeting on September 16, 2026.
8. The ZBA acted unlawfully and unreasonably in denying the frontage variance and the contiguous lot variance and misconstrued, misapplied or otherwise misinterpreted the facts and law for both applications as described herein.
9. The subject property (the "Property") is a 24.7-acre lot with no frontage located in the R-III Low Density Residential District designated for residential and agricultural uses on land remote from municipal water and sewer services and which because of its character requires large minimum lot sizes...See Article VIII. The Property is oddly shaped, has multiple levels of topography throughout, contains pockets of wetlands, and is encumbered by a Public Service Company utility easement.
10. The Applicant purchased this property along with another adjacent tract of land located in a different zoning district in 2020. The adjacent tract of land was later developed into a four-lot subdivision entitled Major Subdivision Plan Tax Map 33 Lot 18 Kearsarge Mountain Road approved by the Planning Board on April 24, 2025 and recorded with the Merrimack County Registry of Deeds ("MCRD") as Plan

202500006094. One of the four-lots (Lot 018-2) was conveyed to a different owner via quitclaim deed. *See* MCRD Book 3895 Page 885 recorded on July 8, 2025.

11. The Applicant owns proposed lot 018-3 (the "contiguous lot") as shown of the plan which is encumbered by poorly drained soils along the whole southern border of the lot which directly abuts and is contiguous to the subject Property. The contiguous lot is also subject to a Public Utility Easement, and has frontage on a cul-de-sac.
12. For the enjoyment of and access to the subject Property, the School District provided for a right-of-way (the "ROW") to the Property as shown on a recorded plan entitled Tax Map 31, Lot 51 Boundary Survey of Warner Elementary School dated August 1, 2001. *See* Plan No. 16516 recorded at the MCRD. Said ROW is 430.15 ft in length from Kearsarge Road to the subject Property and no obstructions (such as playground equipment or the like) was shown to encroach into said ROW. Additionally, only one exceedingly small corner of the school building appears to be at its closest point approximately 15-20 feet from the ROW while the furthest distance appears to be over 230 feet away.
13. The Applicant was fully aware of the ROW when she purchased the Property and intended to use the 25-foot right-of-way to access the Property.
14. Prior to filing the ZBA applications and in in good faith and in the spirit of cooperation, the Applicant's attorney reached out to the School District to inform it of her client's intent to seek a variance and discuss concerns that it may have relative to the utilization of the right-of-way for a single-family residence. A copy of the variance application was forwarded to the School District before it was filed with the Town. These communications appeared to be positive and productive.
15. Unbeknownst to the Applicant, the School District filed a letter with the Town without ever sending a copy to the Applicant improperly characterizing the parties' communications.
16. The ZBA's actions in denying both variance applications were unlawful and unreasonable as demonstrated by its findings of fact in its Notices of Decision for both variance requests.

17. For the frontage variance, per the Notice of Decision ("NOD"), the ZBA alleged facts not supported by the record and failed to provide a reasonable and lawful basis for denial.
18. For example, the NOD stated, "[T]he current ROW has never been used." This statement is contrary to the evidence presented at the public hearing. The ROW has been used by the Applicant's family on multiple occasions to include the use of trucks and other larger vehicles.
19. The NOD provided for a denial on all five variance criteria.
20. For criteria one, public interest, the NOD read "the public interest, including the 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 roadway." This again is inconsistent with the facts presented at the hearing. The lot has no frontage on Kearsarge Road as it will be utilizing a ROW that is approximately 430 feet long. The proposed single-family home on this 24-acre lot will not be located near or on Kearsarge Road and will be set back at several hundred from the roadway.
21. There is no overcrowding on the roadway nor were there any identifiable safety concerns expressed due to the utilization of the 25 ft width ROW onto Kearsarge Road.
22. The ZBA acted unreasonably using the school district failure to plan and its ability to rectify its improper planning as a basis for denial. It is well settled law that the grantor of an easement cannot impede or otherwise obstruct the easement holder's use of the easement area.
23. Further, the use is for one single family residence. It is unreasonable for the ZBA to complain about the alleged noise, fumes and vibration of vehicles in addition to its alleged safety concerns that arise from plowing and drainage while at the same time, express to the Applicant that she has the ability to log, harvest timber and engage in other recreational activities on the Property , all of which would utilize the

ROW and would result in larger trucks, machinery and equipment compared to a single family dwelling.

24. The ZBA also noted that the 25 feet ROW may cause difficulty for safety vehicles. Again, there was no evidence suggesting this concern from any emergency personnel. In fact, during the hearing, it was discussed that in the immediate area there was another resident who enjoyed similar access to his property (i.e. a long and steep driveway to his house with no concerns identified in accessing his property).
25. There were no identifiable concerns that the granting of the variance altered the character of the neighborhood or threatened the health safety and welfare of the general public.
26. Regarding criteria two, the ZBA found that the spirit of the ordinance is to uphold a safe and orderly distance between properties and maintain the existing character of the neighborhood" as a basis of its denial. This is simply unlawful and unreasonable. There is no structure or house located on the ROW – the 430-foot-long ROW will be used to access a 24-acre lot for a single-family residence. There is considerable distance between properties and a single-family residence in the R-III district on a 24-acre lot accessed by a 430-foot ROW. This observes the spirit.
27. Regarding criteria three, the ZBA found that the Applicant did not suffer a loss as she is able to access her property to harvest timber and then proceeds to opine that the gain to the public in maintaining the character of the neighborhood and avoiding safety issues outweigh any potential loss to the public. Basically, the ZBA concluded that the gain to the public (maintaining the character of the neighborhood – already discussed – character is maintained) and avoiding safety issues (none identified) outweighed any loss to the Applicant since the Applicant can enjoy the property and harvest timber (harvesting timber requires the use of big trucks and heavy machinery). Without the variance the Applicant loses her right to any reasonable use of the Property.

28. Regarding criteria four, the values of surrounding properties are not diminished, the ZBA found that the variance would have negative financial impacts on the school property (i.e. for fencing, bus turnaround, etc.); however, this is not the proper analysis. The School District is the entity which provided the ROW. These impacts would occur whether or not the variance was granted. The School District did not dispute that the Applicant has the right to use the ROW now. Any financial impacts (which are not diminution in property values) were self-created by the school district.
29. Regarding criteria five, the ZBA failed to identify the special characteristics of the lot which include the large size, irregular shape, wetlands, the public utility easement, the ROW, the topography and the landlock locked status. The ZBA unreasonably and unlawfully dismisses these special characteristics and offers harvesting timber as use for the Applicant to enjoy and references facts which are not germane to the hardship analysis. Further, without the variance, there is no reasonable use of the Property.
30. For the contiguous lot frontage, the ZBA engaged in similar mishaps, faulty analysis and unlawful and unreasonable actions in denying the variance request.
31. The contiguous lot in question is a single-family residential lot as part of a four-lot subdivision approved by the Town and described in detail above.
32. Regarding criteria one and two, the ZBA's analysis would deny ***any*** variance that came before it. Given the nature of the contiguous lot, the spirit and intent are met and would not require the Applicant to convert or otherwise use a single-family lot in a four-lot subdivision to act as a roadway to another roadway which is not feasibly possible. This is unreasonable and would require an amendment to the subdivision plan which is not under the same ownership. The thought of utilizing a single-family lot in a four-lot subdivision to provide access to a 24-acre lot for a single-family home should cause concern for the ZBA about the safety and design changes to the four-lot subdivision.

33. Regarding criteria three, the substantial justice analysis falls victim to the same mishaps as described above. The NOD reads "substantial justice is served by denying this variance because the owner had/has options to use the contiguous lot to address the conditions of the non-conformity and provide access for frontage to serve the otherwise landlocked lot." This is unreasonable. Ther is no mention of the loss to the Applicant or any conceivable gain to the public (of which there is none).
34. Regarding criteria four, the value of surrounding properties analysis of the ZBA is also misplaced. The analysis of described above of the frontage variance applies here as well. It is unlawful and unreasonable for the ZBA to consider the school district's lack of planning as part of its analysis for this criterion.
35. Regarding criteria five, the ZBA's hardship argument again is also similarly misplaced. Information was presented to the Board that access to the Property via the subdivision lot is not feasible due to wetlands (the whole southern border of the contiguous lot which abuts the subject Property is encumbered with poorly drained soils and associated buffer impacts) and other constraints, not to mention once again that the contiguous lot is single-family lot, part of a four-lot lot subdivision plan approved by the Town.
36. Further, the Applicant did not create a hardship. The School District provided a ROW to access the Property, and she intended to use it for a single-family residence on the subject Property. She developed the adjacent property according to Town's regulations and now the ZBA is calling this a self-created hardship. That is simply unlawful and unreasonable.
37. Additionally, the ZBA acted unlawfully and unreasonably when it failed to grant the Motion to Reopen the Public Hearing and consider the Applicant's willingness to provide for conditions of approval such as the Applicant's position to install a fence, agree to a waiver of municipal liability, share the bus route area to avoid reconstructing the bus route, limit construction time to when school was out of session, etc.

38. The ZBA seemed to not carefully consider other facts discussed during the hearing which weighed in favor of granting the variance. Some examples include but are not limited to the following:
    a. The request was for one single family dwelling on a 24-acre lot.
    b. The ROW as shown on the plan would be utilized to service just one single family residence.
    c. The ROW is 25 ft in width and 430 ft long, placing the proposed single-family structure far off Kearsarge Road.
    d. Any negative financial impacts or concerns raised by the School District were self-created.
    e. The contiguous lot is part of a four-lot subdivision.
    f. Denial of the variance results in no reasonable use of the Property and results in a taking.
39. The meeting minutes are replete with factual and legal statements made to the ZBA which were not carefully considered or misapplied or misconstrued and support the granting of both variances. Some examples include but are not limited to the following:
    a. The school district does not object to the use of the ROW.
    b. The surrounding area consists of single-family homes.
    c. The school district does not object that the Applicant has a perpetual and unobstructed right-of-way to travel by any type of vehicle or in any other manner over and across the land.
    d. The school district does not have any reservations relating to the home.
    e. Jan Gugliotti finds a bit of hypocrisy in that. She spoke about a different unsafe building near a school without any safety fencing.
40. The meeting minutes are replete with statements made by ZBA members that are unlawful and unreasonable. The denial of the variances results in a taking of the Applicant's property as there is no reasonable use of the Property. Some examples include but are not limited to the following:

41.

a. Jan Gugliotti explained that she would vote no based on the information the Board received two weeks ago that lacked conversation or negotiation with the school board.
b. Chair Barb Marty stated that allowing frontage that is so small in that neighborhood will be contrary to the character of the neighborhood and it could lead to crowding on the street and focused her denial on the construction of the single-family residence.
c. Sam Carr stated that the variance is contrary to the public interest in that all of the passage has to be done near a public building.

42. Further, the reasons stated in this Motion can be applied, whether or not specifically stated, to analysis of both requests are meant to do the same. Also, the Applicant incorporates her application (facts and legal analysis), the meeting minutes and the Notices of Decisions as if fully stated herein.

43. In conclusion, the actions of the ZBA were unlawful and unreasonable, and the motion for rehearing should be granted.

Respectfully submitted
DEVINE, MILLIMET & BRANCH, P.A.

/s/ Laura J. Gandia

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Dated: September 24, 2026