

Applicant's Checklist

Have you included		Item	Land Use Office finds	
Yes	No		Yes	No
	✓	Complete and sign, the proper application for the type of appeal (request).	✓	
	✓	If a variance is requested, a referral from the Select Board, the Planning Board or a denial of a Building Permit from the Building Department must be included with the application. <i>Appeal</i>	✓	
	✓	A list of all abutters within 200 feet of the boundaries of the property on the supplied form. Accuracy is the applicant's responsibility. The abutters list must be obtained from the Town of Warner's Assessor's records.	✓	
	✓	An attached copy of any order, notice of violations or other communications received from either the Select Board, the Planning Board or the Building Department that pertains to the property. (If applicable) <i>Appeal</i>	✓	
	✓	Plans shall include: <ul style="list-style-type: none"> Clearly indicate where the site is located (locus map) and what is proposed drawn to scale. 	✓	
	✓	<ul style="list-style-type: none"> Show for the "lot of record" the boundary lines with footage on all sides. 	✓	
	✓	<ul style="list-style-type: none"> A copy of the lot's deed (to verify Owner). 	✓	
	✓	<ul style="list-style-type: none"> Name of the road the lot has frontage on. 	✓	
	✓	<ul style="list-style-type: none"> Include all existing structures on the lot, clearly indicating their dimensions, distance from other structures and distance from abutting property line, drawn to scale. 	✓	
	✓	<ul style="list-style-type: none"> For a proposed structure, include all of the above and a floor plan with dimensions, (length, width, and height). 	✓	
	✓	The applicant has paid fees (see application for specific fees). Check made out to the Town of Warner .	✓	
	✓	Application must be received 15 days prior to the next ZBA meeting.	✓	
	✓	All property owners must sign the application.	✓	
	✓	Authorization from Owner must be signed to designate someone to speak on behalf of the property owner(s). (If applicable)	✓	



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

APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

This application is subject to NH RSA 91-A which affords the public access to government records and meetings.

Application Fee		Notification Fee	
Residential	\$50.00	Abutter Notification # x	\$8.00
Commercial	\$100.00	*Newspaper Notification	\$60.00

Note on fees: Fees for publication of Legal Notice will be invoiced and must be paid prior to starting the hearing. Please use attached form to list all abutters within 200 feet of the boundaries of the property. Standard posting in newspaper \$60.00 for Intertown Record. Special Posting upon request by applicant \$300 for the Concord Monitor.

Applicant/Contact Person Information			
Name of Applicant: James McLennand		Date: 03/27/2023	
Applicant Mailing Address: 225 Couchtown RD			
Town: Warner	State: NH	Zip: 03278	
Telephone Primary: 603-848-1706	Alternate:		
Owner of Property Information			
Name of Owner: Same as above		Date:	
Owner Mailing Address:			
Town:	State:	Zip:	
Telephone Primary:	Alternate:		
Location and Description of Property			
Map #: 15	Lot #: 053-3	Zoning District: R3	
Address:			
Details of Request: Please feel free to include additional information on separate attached pages. Be sure to put the name of applicant and date on each sheet. (indicate number of sheets attached _____)			

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements to the terms of:

Article: VII _____, Section: C. b. _____ of the Warner Zoning Ordinance

The applicant must state in writing how the following pertains to the property. The applicant must be prepared to present the conditions at the Public Hearing. If you do not use the space provided refer to attached pages:

1. Does the request involve a dimensional requirement, not a use restriction? Circle one: Yes or No
PLEASE SEE ATTACHED SUPPLEMENT.

Answer either 2.A., or 2.B and C.

2. A. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town:

PLEASE SEE ATTACHED SUPPLEMENT.

If (A) does not apply answer both (B) and (C):

B. Explain how the nonconformity was discovered after the structure was substantially complete or after a vacant lot in violation had been transferred to a bona fide purchaser:

PLEASE SEE ATTACHED SUPPLEMENT.

C. Explain how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake:

PLEASE SEE ATTACHED SUPPLEMENT.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area:

The location of the additional structure is set far enough off the road and not clearly visible from the direct adjoining neighbors.

4. Explain how the cost of correction far outweighs any public benefit to be gained:

PLEASE SEE ATTACHED SUPPLEMENT.

Supplement to Application for Equitable Waiver of Dimensional Requirements

Applicant: James McLennand
Address: 225 Couchtown Road
Tax Map 15, Lot 053-3
Zoning District: R3

Date: June 27, 2023
Submitted by: Derek Lick, Orr & Reno, P.A., Counsel to Mr. McLennand

Nature of the Request

Mr. McLennand is seeking an equitable waiver to allow for one corner of his newly-constructed garage to encroach upon the 40-foot property line buffer identified in Article VII, Section C.b. of the Warner Zoning Ordinance. Mr. McLennand has had the garage location measured in relation to the property line, and identified 66 square feet of one corner that, at point of greatest encroachment, is seven feet into the 40-foot buffer area, equating to 17.5% of the buffer – allowing 82.5% of the buffer to remain in place.

Response to Questions Posed in the Application

1. Does the request involve a dimensional requirement, not a use restriction?

Answer:

Yes.

2. A. Explain how the violation has existed for 10 years or more without enforcement action, including written notice, being commenced by the town.

Answer:

Not applicable.

2. B. Explain how the nonconformity was discovered after the structure was substantially complete or after a vacant lot had been transferred to a bona fide purchaser.

Answer:

The nonconformity was discovered by the Town Building Inspector when he came to the site after an abutting property owner complained about the garage, apparently because it impacted the view from the abutting property. Of note, the Town Building Inspector had

previously been to the site to inspect the foundation for the garage after it was poured, and he did not identify any issues with respect to the setback at that time. Additionally, when the Building Inspector measured the distance between the garage and the property line, he concluded that the corner of the garage closest to the property line was 36 feet away, a four-foot encroachment. That measurement did not turn out to be correct, confirming the difficulty in measuring the area, likely because of the significant topographical change in the area between the garage and the property line.

2. C. Explain how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.

Answer:

Mr. McLennand and his contractor were aware that there were setback requirements imposed by the Town's Zoning Ordinance, and they believed that the garage was being constructed in such a way to meet those requirements. Specifically, they believed the garage to be outside the setback because it was being attached to Mr. McLennand's house and constructed roughly in line with the back wall of the house, which everyone agrees was outside of the required setback. However, they did not appreciate that that the angle of the boundary line in relation to the garage was such that the boundary line got so much closer to the garage at the corner of the garage farthest from the house that it would cause the encroachment into the setback by that far corner of the garage.

The difficulty in identifying the encroachment is evidenced by the fact that the Town Building Inspector did not notice any problems with the location with the garage when inspecting its foundation, that the Town Building Inspector's measurements were different from those confirmed on the ground when submitting this Application, and that the garages sits upon knoll, placing it above the property line topographically, making the measurement more difficult.

In short, the encroachment was not caused by ignorance of the existence of a setback or by bad faith, but in an honest mistake.

3. Explain how the nonconformity does not constitute a nuisance of diminish the value or interfere with future uses of other property in that area.

Answer:

First, it is important to note that the encroaching rear corner of the garage does not encroach upon or cross over the property line itself, but rather just encroaches into the 40-foot setback. The garage, if allowed to remain in place, will still sit completely on Mr. McLennand's property, and it will be 33 feet from the property line. Thus, the encroachment in no way impacts the abutter's rights to develop the abutter's property or otherwise construct improvements on the abutter's property. Nor is there any evidence that the corner of the garage being 33 feet, rather than 40 feet from the abutter's property line diminished the value of the abutter's property. This is particularly true where there a

is a large, wooded buffer area on the abutter's own side of the property line between the garage and the abutter's home, which is almost 200 feet from the rear corner of the garage.

Second, the seven-foot encroachment of the corner of the garage does not constitute a nuisance. According to the New Hampshire Supreme Court, a nuisance exists when "an activity substantially and unreasonably interferes with the use and enjoyment of another's property. To constitute a nuisance, one's activity must "cause harm that exceeds "the customary interferences a land user suffers in an organized society," and "be an appreciable and tangible interference with a property interest." *Dunlap v. Daigle*, 122 N.H.295, 298 (1982). The Town's Zoning Ordinance defines nuisances as a "use that may be obnoxious or injurious by reason of production, emission of odor, dust, smoke, refuse matter, fumes, noise vibration or similar conditions, or that is dangerous to the comfort, peace, health or safety of the community or tending to its disturbance or annoyance" Article IV, Section H. There is nothing to suggest that the seven-foot encroachment by one corner of the garage will interfere with the abutter's use of the abutter's property. To the extent the abutting property owner is concerned about being able to view the garage through the mature trees on the abutter's property, that view will be materially identical whether the corner of the garage is 33 feet or 40 feet from the property line.

4. Explain how the cost of correction far outweighs any public benefit to be gained.

Answer:

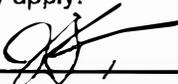
The violation was discovered only after the garage had been substantially completed (with a foundation poured, framing complete, a roof constructed and walls in place). As previously noted by Mr. McLennand, the cost of the site work and construction of the garage is in excess of \$100,000. Remedying the encroachment will either require the demolition of the entire garage or spending thousands of dollars to retain a structural engineer to investigate options for re-designing the garage without the encroaching corner and creating a plan for safely demolishing that corner (and its foundation) while maintaining the structural integrity of the rest of the garage to keep it from collapsing during any partial demolition, and then spending thousands dollar more on the demolition and reconstruction itself.

That significant expense far outweighs the public benefit to be gained – a 40-foot, rather than a 33-foot setback from an already-developed neighboring parcel with a large stand of mature trees providing natural screening between the neighbor's home and the garage. Notably, the 33-foot setback for which Mr. McLennand is seeking approval is larger than that required in some other residential districts in Warner, and thus the public's interest can be said to require 40-feet in all instances regardless of the circumstances. Here, a 33-foot setback is reasonable in meeting the public's need to allow for sufficient distance between houses and other structures on abutting parcels, and the cost to obtain the additional seven feet outweighs the benefit of that additional seven feet given the nature of the lots and the location of the existing structures.

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

Authorization from Owner(s): _____

1. I (We) hereby designate Derek D. Lick, Esq. of Orr & Reno, P.A. to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [Zoning Board].
2. By submitting this application I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the Zoning Board may at some point during the review process schedule a Site Visit, which will be duly posted.
3. I (We) understand that the Zoning Board will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.
4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s): _____  Date: 6/26/23
 _____ Date: _____

Signature of Applicant(s), if different from Owner: _____ Date: _____

_____ Date: _____

Printed name of person(s) who signed above:

JAMES R. MCLENNAND

For Zoning Board of Adjustment Use Only			
Assigned Case #:	2023-1a		
Date Received at Land Use Office:	6/27/23		
Received by:	Janice Loz		
Fees Submitted:			
Amount: \$150.00	Cash:	Check #:	Other:
Abutters' List Received:	Yes	<input checked="" type="checkbox"/> X	No
Date of Review: 7/12/23	Date of Hearing: 7/12/23	Date Approved:	

All costs of mailing by certified mail, fees, and legal advertisement must be paid by applicant before the hearing may begin.



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

ABUTTER'S NOTICE OF PUBLIC HEARING *Zoning Board of Adjustment Meeting*

July 12, 2023

Meeting in the Town Hall

7:00 PM

The Town of Warner Zoning Board of Adjustment has received an application for a Variance application. As of State Law (RSA 675:7), the Zoning Board will hold a Public Hearing on the request. Notification of this hearing is being made to all abutters. The hearing will give you the opportunity to look at the proposal, ask questions and make comments. The application will be available the Monday before the meeting, online at <https://warnernh.gov> on the Zoning Board web page, under the Cases icon.

Written comments will be made a part of the public record and must be received by 12:00 PM **noon on the day of the meeting Wednesday, July 12, 2023**. Mail to: Town of Warner, Zoning Board, P.O. Box 265, Warner, NH 03278, or, E-mail: landuse@warnernh.gov

Re-Hearing for an Application for an Equitable Waiver of Dimensional Requirements

Case: 2023-01a
Applicant: James McLennand
Agent: Derek Lick, Orr & Reno, P.A.
Address: 225 Couchtown Road
Map/Lot: Map 15, Lot 053-3
District: R-3

Details of Request: Requesting an Equitable Waiver to allow for one corner of his newly constructed garage to encroach upon the 40-foot property line buffer identified in Article VII, Section C.b. of the Warner Zoning Ordinance.

This meeting will be held in person at the Town Hall and remotely through Zoom conferencing.

Join Zoom Meeting: <https://us02web.zoom.us/j/84102051310>

Meeting ID: 841 0205 1310

Passcode: 1234

Note: Zoning Board meetings will end no later than 10:00 P.M. Items remaining on the agenda will be heard at the next scheduled monthly meeting.

Return to:
Tarbell & Brodich, PA
45 Centre Street
Concord, NH 03301

\$43,500.00

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **NEVADA MARKETING, INC.**, as Trustee of **JM and DJ 2012 REVOCABLE TRUST**, with a mailing address of PO Box 325, Town of Warner, County of Merrimack and State of New Hampshire 03278, for consideration paid, grants to **TWO FORTY ONE, LLC**, a New Hampshire limited liability company with a mailing address of 497 Hooksett Road, #364, City of Manchester, County of Hillsborough and State of New Hampshire 03104 a 41.37% interest, **WARDEN HILL REALTY, LLC**, a New Hampshire limited liability company with a mailing address of 83 Waldron Hill Road, Town of Warner, County of Merrimack and State of New Hampshire 03278 a 5.00% interest, **CAN HOLDINGS, LLC**, a New Hampshire limited liability company with a mailing address of 116 S. River Road, Unit G, Town of Bedford, County of Hillsborough and State of New Hampshire 03110 a 6.46% interest, **KL HOLDINGS LLC**, a New Hampshire limited liability company with a mailing address of 116 S. River Road, Unit G, Town of Bedford, County of Hillsborough and State of New Hampshire 03110 a 5.00% interest, **HCH 2 PLEASANT POND ROAD WARNER NH LLC**, a New Hampshire limited liability company with a mailing address of PO Box 1174, City of Rochester, County of Strafford and State of New Hampshire 03866 a 35.71% interest, and **NORMAN E. WEBB, III**, with a mailing address of 22 Cornwall Street, City of Portsmouth, County of Rockingham and State of New Hampshire 03802 a 6.46% interest, all as tenants in common, with WARRANTY covenants, all its right, title and interest in the following:

Two certain tracts or parcels of land together with the buildings and improvements now or hereafter located thereon, situated in the Town of Warner, County of Merrimack and State of New Hampshire, more particularly bounded and described as follows:

TRACT 1 - MAP 3, LOT 27, OLD WARNER LANE, WARNER, NH

A certain tract or parcel of land with the buildings thereon situated on the southerly sideline of Old Warner Lane, in the Town of Warner, County of Merrimack, State of New Hampshire, shown as Map 3, Lot 27 on

a plan entitled "Site Plan Prepared for Atlasta Self Storage, LLC, Old Warner Lane, Warner, New Hampshire" dated June 20, 2001, and recorded in the Merrimack County Registry of Deeds as Plan #15577, being more particularly bounded and described as follows:

Beginning at an iron rod set in the southerly sideline of Old Warner Lane, said point being the northwest corner of the within described property; thence South 66° 02' 40" East, along the southerly sideline of Old Warner Lane, a distance of 509.16 feet to an iron rod set at the westerly sideline of Interstate 89, said point being the northeasterly corner of the within described property; thence South 03° 15' 38" West, along the westerly sideline of Interstate 89, a distance of 373.27 feet to a New Hampshire highway bound; thence South 03° 15' 44" West, along the westerly sideline of Interstate 89, a distance of 336.68 feet to a point; thence South 43° 26' 50" West, along Tax Map 3, Parcel 26, a distance of 116.70 feet to a point; thence North 31° 31' 33" West, along Tax Map 3, Parcel 28, a distance of 932.49 feet to an iron rod set; thence North 34° 49' 57" East, along Tax Map 3, Parcel 27A, a distance of 250.22 feet to the iron rod first mentioned above and the point of beginning.

Subject to all rights to The State of New Hampshire as set forth in Warranty Deed of Lewis A. Nelson, dated January 8, 1959 and recorded with the Merrimack County Registry of Deeds, Book 836, Page 379.

Subject to all matters as set forth on Merrimack County Registry of Deeds Plan #15577.

TRACT II - 2 PLEASANT POND ROAD, (ROUTE 103 EAST), WARNER, NH

A certain tract or parcel of land, with the buildings thereon, situated in Warner, Merrimack County, State of New Hampshire, bounded and described as follows:

Beginning on the westerly side of Pleasant Lake Road at the southeasterly corner of the within conveyed premises, as shown on a plan of land hereinafter referred to;

Thence running North 84° 3' 45" West by and along property now or formerly of Beatrice Enterprises, Inc., 170.10 feet to a point, as so shown;

Thence turning and running North 2° 17' 40" East by and along land now or formerly of Edmund Preve, 268.81 feet to a point, as so shown;

Thence turning and running North 67° 17' 40" East, 79.3 feet to a point, as so shown;

Thence turning and running in a southeasterly direction by and along the westerly side of Route 103, 217.57 feet to a New Hampshire Highway Department concrete bound, as so shown;

Thence turning and running South 11° 4' 30" West by and along the said westerly side of Pleasant Lake Road, 131.96 feet, to the point of beginning.

Said parcel is shown on a plan of land entitled "Plan of Land in Warner, New Hampshire, owned by Beatrice Enterprises, Inc., May 1975, Thomas R. Stevens, Surveyor", and recorded in the Merrimack County Registry of Deeds as Plan #4107.

Subject to all matters set forth on Merrimack County Registry of Deeds Plans #4107 and #14721.

MEANING and INTENDING to describe and convey all and the same premises as conveyed to J&M Marketing Inc., Trustee of JM and DJ 2012 Revocable Trust by deed of A Warner Storage, LLC dated February 21, 2012 and recorded with the Merrimack County Registry of Deeds in Book 3299, Page 1198.

THIS IS NOT HOMESTEAD PROPERTY.

Executed this 6th day of July 2022.

Cynthia H. Thompson
Witness

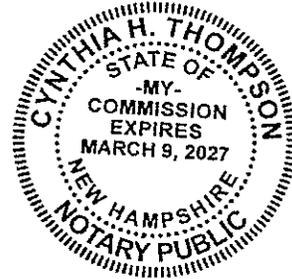
Dianna Jamieson
Dianna Jamieson duly authorized Vice President
of Nevada Marketing, Inc., Trustee of
JM and DJ 2012 Revocable Trust

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me this 6th day of July 2022 by Dianna Jamieson, duly authorized Vice President of Nevada Marketing, Inc., Trustee of JM and DJ 2012 Revocable Trust, on behalf of said Trust.

Cynthia H. Thompson
Notary Public/~~Justice of the Peace~~
My Commission Expires: _____

MICRD



LOT 3 5.0 ACRES

