



RECEIVED
 JAN 25 2022
 WARNER LAND USE

TOWN OF WARNER

P.O. Box 59
 Warner, New Hampshire 03278-0059
 Land Use Office: (603)456-2298 ex. 7
 Fax: (603) 456-2297

Zoning Board of Adjustment

APPLICATION FOR VARIANCE

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	\$7.00
Commercial	\$100.00	Applicant Notification	\$7.00

* Fees for publication of the 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.

Applicant/Contact Person Information			
Name of Applicant: Suzanne Brunelle, Esq.			Date: January 18, 2022
Applicant Mailing Address: Devine, Millimet & Branch, P.A. 111 Amherst Street, Manchester, NH 03101			
Town: Manchester		State: NH	Zip: 03101
Telephone	Primary: 603-695-8570	Alternate:	
Owner of Property Information			
Name of Owner: Daniel Violette, Paula Brown and Marc Violette			Date: January 18, 2022
Owner Mailing Address: 599 Kearsarge Way, Portsmouth, NH 03801; 302 Kearsarge Mountain Road, Warner, NH 03278; 5654 Botner Drive, The Villages, FL 32163			
Town: Warner		State: NH	Zip: 03278
Telephone	Primary: 603-496-1674	Alternate: 603-496-1649	
Location and Description of Property			
Map #: 14	Lot #: 36- 1	Zoning District: R-2	
Address: 302 and 296 Kearsarge Mountain Road, Warner, NH			
Will a Site Plan Review approval be required by the Planning Board? Proposed Use:			Yes <input checked="" type="radio"/> No <input type="radio"/>
See attached.			
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: Six (6) sheets attached plus Site Plan)			

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

The undersigned hereby requests a VARIANCE to the terms of:

Article: VI , Section: C(1)(a) of the Warner Zoning Ordinance

For a Variance to be granted, the following five conditions must be met:

(For more information reference the Warner Zoning Ordinance Article XVII and RSA 674:33.)

Please explain in writing how your project meets each of the five (5) conditions, in the space provided on the following pages. If you do not use the space provided refer to attached pages.

The applicant seeking a variance **must** be prepared to prove these conditions at the Public Hearing. In order for the public hearing to proceed there needs to be responses to all five conditions.

The five conditions are:

1. Granting the variance will not be contrary to the public interest because:
2. By granting the variance, the spirit of the ordinance is observed because:
3. By granting the variance substantial justice is done because:
4. Granting the variance will not diminish the values of surrounding properties because:
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - A. Meaning that owing to special conditions of the property that distinguish it from other properties in the area:
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property; **and**
 - ii. The proposed use is a reasonable one.
[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]
 - B. **Or**, if the criteria in 'A' are not established, then owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property.

[Explain what is unique about the property that makes the specific zoning restriction unreasonable]

1. Granting the variance will not be contrary to the public interest because:

See attached.

2. By granting the variance, the spirit of the ordinance is observed because:

See attached.

3. By granting the variance substantial justice is done because:

See attached.

4. Granting the variance will not diminish the values of surrounding properties because:

See attached.

Answer - 5.A.i. and 5.A.ii. - or 5.B.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

- A. Meaning that owing to special conditions of the property that distinguish it from other properties in the area: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property;

See attached.

and

- ii. The proposed use is a reasonable one.

[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]

See attached.

Or, if the criteria in 'A' are not established

- B. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property.

[Explain what is unique about the property that makes the specific zoning restriction unreasonable]

Not applicable.

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ALL COSTS OF MAILING BY CERTIFIED MAIL, FEES, AND LEGAL ADVERTISEMENT IN A NEWSPAPER MUST BE PAID BY APPLICANT BEFORE THE HEARING MAY BEGIN.

Town of Warner Zoning Board of Adjustment Abutter(s) List

Please list all abutters **within 200 feet** of the boundaries of the property. Applicant must reference and follow stipulations in the Abutter(s) List Instructions on page 3, item numbers 10.a. through 10.d. of the Application Instructions.

Map 14	Name: Clark, Nicholas John and Katherine Ann
Lot 36	Address: 278 Kearsarge Mountain Road, Warner, NH
Map 14	Name: Mell Family Living Trust (Gary and Christine Mell)
Lot 38	Address: 288 Kearsarge Mountain Road, Warner, NH
Map 14	Name: Hubley, Frank Jr. and Helen
Lot 39	Address: 291 Kearsarge Mountain Road, Warner, NH
Map 14	Name: Nolan, Kim
Lot 39-1	Address: 301 Kearsarge Mountain Road, Warner, NH
Map 14	Name: Allen Revocable Trust and Holmes Revocable Trust (Mary and Robert Allen)
Lot 39-2	Address: 352 Kearsarge Mountain Road, Warner, NH
Map 14	Name: Allen Revocable Trust and Holmes Revocable Trust (Mary and Robert Allen)
Lot 40	Address: 352 Kearsarge Mountain Road, Warner, NH
Map 14	Name: MacBride, Benjamin and Hannah Lee
Lot 29-1	Address: 352 Pleasant Street, Concord, NH 03301
Map	Name: Daniel Violette
Lot	Address: 599 Kearsarge Way, Portsmouth, NH 03801
Map	Name: Paula Brown
Lot	Address: 302 Kearsarge Mountain Road, Warner, NH 03278
Map	Name: Marc Violette
Lot	Address: 5654 Botner Drive, The Villages, FL 32163
Map	Name: Allen & Major Associates, Inc.
Lot	Address: 400 Harvey Road, Manchester, NH 03101

Town of Warner Zoning Board of Adjustment Abutter(s) List

(Continued)

Map	Name: Town of Warner Board of Selectman
Lot	Address: 5 East Main Street, PO BOX 265, Warner, NH 03278
Map	Name: Town of Warner Planning Board
Lot	Address: 5 East Main Street, PO BOX 03278
Map	Name: Suzanne Brunelle, Esq.
Lot	Address: Devine, Millimet & Branch, P.A., 111 Amherst Street, Manchester, NH 03101
Map	Name:
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ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

Authorization from Owner(s):

1. I (We) hereby designate Suzanne Brunelle, Esq., Devine, Millimet & Branch, Professional Association to serve as my (our) agent and 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): Paula J. Brown Date: 1/19/22

Date: _____

Date: _____

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

Date: _____


Printed name of person(s) who signed above:

Paula J. Brown

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Authorization from Owner(s):

1. I (We) hereby designate Suzanne Brunelle, Esq., Devine, Millimet & Branch, Professional Association to serve as my (our) agent and 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: 1/24/2022

_____ Date: _____

_____ Date: _____

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

_____ Date: _____

Printed name of person(s) who signed above:

Mara N. Violette

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

Authorization from Owner(s):

1. I (We) hereby designate Suzanne Brunelle, Esq., Devine, Millimet & Branch, Professional Association to serve as my (our) agent and 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): Daniel Valler Date: 1-19-22

Date: _____

Date: _____

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

Date: _____

Printed name of person(s) who signed above:

Daniel Violette

For Zoning Board of Adjustment Use Only

Assigned Case #:

Date Received at Land Use Office:

Received by:

Fees Submitted:

Amount:

Cash:

Check #:

Other:

Abutters' List Received:

Yes

No

Date of Review:

Date of Hearing:

Date Approved:

Supplement to Application 1 for Variance
Town of Warner Zoning Ordinance Article VI, Section C (1) (a): Minimum Lot Size
Owners and Applicants: Daniel Violette, Paula Brown and Marc Violette

Proposed Use

We are seeking two (2) variances for the property at 295-302 Kearsarge Mountain Road, Warner, NH, also known as Tax Map 14, Lot 36-1. The property is zoned as R-2, Medium Density Residential and has a total acreage of 4.29 acres +/-.

In 1984, a cable television tower was erected on a portion of the property described above. In 2004, the television tower was converted to a cell phone tower, which remains on the property today. On July 10, 2013, the Town of Warner issued a Site Plan Approval for the property and cell phone tower, attached hereto as Exhibit A.

The owners are looking to subdivide the property into two (2) lots, which will allow the residential home on the property to be separated from the commercial cell tower. A copy of the proposed plan dated December 2021, prepared by Allen & Major Associates, Inc. is attached hereto as Exhibit B. The first newly proposed, Lot 36-1, would include the dwelling with acreage of 2.9 acres +/- of land with 296.05 feet of frontage on Kearsarge Mountain Road. This would be a fully conforming lot and does not require any relief from the Zoning Board. The second proposed Lot 36-2 would include the cell phone tower with 1.39 acres +/- of land.

Proposed Lot 36-2 would not have frontage on a road and would be accessed via a right of way over Proposed Lot 36-1 as shown on Exhibit B. As such an application for a variance is being requested from Article VI, Section C(1)(a) which requires that lots created by minor subdivision¹ have a: (1) minimum buildable area of at least two acres (variance application 1); and (2) a minimum frontage of two hundred feet (variance application 2). Proposed Lot 36-2 does not meet these requirements.

The owners are requesting the variances to allow the creation of two parcels as the cell phone tower, due to the commercial nature of the tower, has created a hardship for the owners of the property as it relates to the residential nature of the other proposed lot. The owners are having difficulty in obtaining financing, as lenders are unwilling to mortgage the dwelling because it shares a lot with the commercial cell phone tower.

Condition 1. Granting the variance will not be contrary to the public interest because:

The granting of the variance would not alter or change the current structures on the land, activities on the property, nature of the landscape or tax revenues. The variance is strictly for establishment of a separate lot for the cell phone tower. The variance would not change the property's current state, nor alter the essential character of the neighborhood.

Condition 2. By granting the variance, the spirit of the ordinance is observed because:

¹ A minor subdivision, as defined in the Town of Warner, New Hampshire Zoning Ordinance (amended March 9, 2021), is any subdivision which creates three (3) or fewer lots or condominium units which does not require the construction of any new street or the extension of municipal facilities, and which is not in conflict with any duly accepted or approved street, plan or map.

The spirit of the ordinance has been written to promote the health, safety and welfare of the inhabitants. In the present case, the division of the lot is not being proposed for any new development or for the addition of a structure, rather the owners are just seeking to address the current buildings located on the property. By granting the variance there would be no impact on the health, safety or welfare of the owners or abutters as there is no proposed changes to the property other than the legal division of the parcels.

Condition 3. By granting the variance, substantial justice is done because:

The variance would not result in any change to the land or the structures thereon and would restore the owners' ability to seek and obtain financing for the home located on proposed Lot 36-1. The inability to obtain financing would result in a substantial loss to the owners; while granting of the variance would allow the legal subdivision of the property, which would likely go unnoticed by the public.

Condition 4. Granting the variance will not diminish the values of surrounding properties because:

The variance will not result in any change to the land, structures, nature of the landscape or tax revenues and therefore would not diminish the value of the surrounding properties.

Condition 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

A. Meaning that owing to special conditions of the property that distinguish it from other properties in the area:

The property is unique and has the special condition of containing both a residential home and a commercial cell phone tower on the same lot. We are not aware of any other properties in the neighborhood, which contain both a residential home and cell tower. Allowing the subdivision of the property will allow the residential parcel to obtain financing and act as a standard residential lot, with separation from the cell tower. There is more than sufficient land at 1.39 acres to operate the cell tower.

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property;

It does not make sense to enforce the provision with regard to minimum lot size in this situation. As previously indicated, the proposed residential lot will comply fully with zoning requirements once subdivided from the cell tower. This will allow the homeowner to obtain financing and use the property as a standard residential property. However, there is sufficient acreage for both the residential lot and the cell tower to exist as proposed on Exhibit B, which will be of no detriment to the town or its citizens. The owners will provide access to the proposed cell tower lot by way of an existing right of way as detailed on the plan attached as Exhibit B.

There is no fair and substantial relationship between the ordinance and the application of it to the subject property because there is no advantage for the Town of Warner or the citizens of the community if it were strictly enforced. The resulting hardship to the owners' is significant in that they are unable to obtain a mortgage for the dwelling and otherwise enjoy the residential property as a home.

January 24, 2022

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AND

ii. The proposed use is a reasonable one.

As the requesting use of the property is the same as the current use of the property, the granting of the variance will not change the current reasonable use of the property.

Supplement to Application 2 for Variance
Town of Warner Zoning Ordinance Article VI, Section C (1) (a): Road Frontage
Owners and Applicants: Daniel Violette, Paula Brown and Marc Violette

Proposed Use

We are seeking two (2) variances for the property at 295-302 Kearsarge Mountain Road, Warner, NH, also known as Tax Map 14, Lot 36-1. The property is zoned as R-2, Medium Density Residential and has a total acreage of 4.29 acres +/-.

In 1984, a cable television tower was erected on a portion of the property described above. In 2004, the television tower was converted to a cell phone tower, which remains on the property today. On July 10, 2013, the Town of Warner issued a Site Plan Approval for the property and cell phone tower, attached hereto as Exhibit A.

The owners are looking to subdivide the property into two (2) lots, which will allow the residential home on the property to be separated from the commercial cell tower. A copy of the proposed plan dated December 2021, prepared by Allen & Major Associates, Inc. is attached hereto as Exhibit B. The first newly proposed Lot, 36-1, would include the dwelling with acreage of 2.9 acres +/- of land with 296.05 feet of frontage on Kearsarge Mountain Road. This would be a fully conforming lot and does not require any relief from the Zoning Board. The second proposed Lot, 36-2, would include the cell phone tower with 1.39 acres +/- of land.

Proposed Lot 36-2 would not have frontage on a road and would be accessed via an already existing right of way over Proposed Lot 36-1 as shown on Exhibit B. As such an application for a variance is being requested from Article VI, Section C(1)(a) which requires that lots created by minor subdivision¹ have: (1) minimum buildable area of at least two acres (variance application 1); and (2) a minimum frontage of two hundred feet (variance application 2). Proposed Lot 36-2 does not meet these requirements.

The owners are requesting the variances to allow the creation of two parcels as the cell phone tower, due to the commercial nature of the tower, has created a hardship for the owners of the property as it relates to the residential nature of the other proposed lot. The owners are having difficulty in obtaining financing, as lenders are unwilling to mortgage the dwelling because it shares a lot with the commercial cell phone tower.

Condition 1. Granting the variance will not be contrary to the public interest because:

The granting of the variance would not alter or change the current structures on the land, activities on the property, nature of the landscape or tax revenues. The variance is strictly for establishment of a separate lot for the cell phone tower. The variance would not change the property's current state, nor alter the essential character of the neighborhood.

Condition 2. By granting the variance, the spirit of the ordinance is observed because:

¹ A minor subdivision, as defined in the Town of Warner, New Hampshire Zoning Ordinance (amended March 9, 2021), is any subdivision which creates three (3) or fewer lots or condominium units which does not require the construction of any new street or the extension of municipal facilities, and which is not in conflict with any duly accepted or approved street, plan or map.

The spirit of the ordinance has been written to promote the health, safety and welfare of the inhabitants. In the present case, the division of the lot is not being proposed for any new development or for the addition of a structure, rather the owners are just seeking to address the current buildings located on the property. By granting the variance there would be no impact on the health, safety or welfare of the owners or abutters and no change to the values or charm of the community because there would be no change to the property other than the legal division of the parcels. Access to the cell tower lot would be through a deeded easement. At present, access to the cell tower is via a gravel roadway and access would continue through that gravel roadway.

Condition 3. By granting the variance, substantial justice is done because:

The variance would not result in any change to the land or the structures thereon and would restore the owners' ability to seek and obtain financing for the home located on proposed Lot 36-1. The inability to obtain financing would result in a substantial loss to the owners, while granting of the variance would allow the legal subdivision of the property, which would, more than likely, go unnoticed by the public.

Condition 4. Granting the variance will not diminish the values of surrounding properties because:

The variance will not result in any change to the land, structures, nature of the landscape or tax revenues and therefore would not diminish the value of the surrounding properties.

Condition 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

A. Meaning that owing to special conditions of the property that distinguish it from other properties in the area:

The property is unique and has the special condition of containing both a residential home and a commercial cell phone tower on the same lot. We are not aware of any other properties in the neighborhood, which contain both a residential home and cell tower on the same lot. Allowing the subdivision of the property will allow the residential parcel to obtain financing and act as a standard residential lot, with separation from the cell tower.

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property;

It does not make sense to enforce the provision with regard to road frontage in this situation. As previously indicated, the proposed residential lot will comply fully with zoning requirements once subdivided from the cell tower. This will allow the homeowner to obtain financing and use the property as a standard residential property. The current size of the entire parcel does not allow for both the proposed residential lot and the cell tower lot to fully comply with the road frontage requirement and the right of way for access to the cell phone tower already exists. The owners will continue to provide access to the proposed cell tower lot by way of a deeded easement as detailed on the plan attached as Exhibit B.

There is no fair and substantial relationship between the ordinance and the application of it to the subject property because there is no advantage for the Town of Warner or the citizens of the community if it were strictly enforced. The resulting hardship to the owners' is significant in that they

January 24, 2022

Page 3

are unable to obtain a mortgage for the dwelling and otherwise enjoy the residential property as a home.

AND

ii. The proposed use is a reasonable one.

As the requesting use of the property is the same as the current use of the property, the granting of the variance will not change the current reasonable use of the property.

For Recorder's Use:
Transfer Tax: \$ Exempt
Recording Fee: \$ 24.50
LCHIP Surcharge: \$ Exempt
Return to: Acct.: 30
Devine, Millimet & Branch
Attn.: SB/JMP
111 Amherst Street
Manchester, NH 03101

FIDUCIARY DEED

(to confirm distribution under a trust upon devise)

Daniel P. Violette, successor Trustee of the Diane L. Violette Living Trust u/d/t dated March 29, 2012, having an address of 302 Kearsarge Mountain Road, Warner, New Hampshire 03278, grant(s) to **Daniel P. Violette**, having a mailing address of 599 Kearsarge Way, Portsmouth, New Hampshire 03801; **Marc A. Violette**, having a mailing address of 5654 Botner Drive, The Villages, FL 32163; and **Paula J. Brown**, having a mailing address of 302 Kearsarge Mountain Road, Warner, New Hampshire 03278; as tenants in common

Two certain tracts of land, with the buildings thereon, situated in the town of Warner, County of Merrimack and State of New Hampshire, bounded and described as follows:

TRACT I

Beginning at a point on the easterly side of Kearsarge Mountain Road, also known as the Tory Hill Road, said point being the northwest corner of land now or formerly of E. Brandt and the southwest corner of the premises herein conveyed;

Thence running in a northerly direction a distance of 300 feet along the easterly side of said Kearsarge Mountain, Road to a point;

Thence turning and running in an easterly direction a distance of 435 feet along land now or formerly of B. Bouchard to a point;

Thence turning and running in a southerly direction a distance of 305 feet along land now or formerly of Young to a point;

Thence turning and running in a westerly direction a distance of 303 feet along land now or formerly of Edwards to a point;

Thence turning and running in a northerly direction 5 feet along land now or formerly of E. Brandt to a point;

Thence turning and running in a westerly direction a distance of 132 feet along said E. Brandt land to the point of beginning.

Said to contain three (3) acres, more or less.

TRACT II

A certain tract of land situated easterly of Kearsarge Mountain Road, in the Town of Warner, County of Merrimack and State of New Hampshire, bounded and described as follows:

Beginning at a point marking the southeast corner of other land of the said Violettes, said point being the northeasterly corner of the premises herein conveyed and being at land now or formerly of James Foley; thence running in a generally south southeasterly direction by said Foley land a distance of two hundred (200) feet, more or less, to an iron pin at the northernmost corner of land being retained by the said Edwards; thence turning and running approximately west southwesterly by said Edwards land a distance of three hundred three (303) feet to an iron pin on the easterly line of land owned now or formerly by Phil K. Reynolds; thence turning and running in a generally north northwesterly direction by said Reynolds land a distance of two hundred (200) feet to an iron pin, said iron pin being located five (5) feet, more or less, southerly of the northernmost corner of said Reynolds land; thence turning and running approximately east southeasterly by said other land of Violettes a distance of three hundred three feet, more or less to the point of beginning.

Containing one and 5/10 (1.5) acres, more or less.

In accordance with the decision of the Town of Warner Planning Board, the foregoing described tract of land is to be annexed to a certain tract of land (**TRACT I**, above) conveyed to the said Paul E. Violette and Diane L. Violette by warranty deed of Bonnie J. Tillotson dated April 6, 1981 and recorded in the Merrimack County Registry of Deeds at Book 1448, Page 157. See also Warranty Deed of Richard M. Edwards and Bess N. Edwards to the said Paul E. Violette and Diane L. Violette dated May 7, 1984 and recorded at the Merrimack County Registry of Deeds at Book 1476, Page 779.

Meaning and intending to describe the same premises conveyed to Diane L. Violette, Trustee of the Diane L. Violette Living Trust by Warranty Deed of Diane L. Violette dated March 29, 2012 and recorded at 3316, and Page 162 of the Merrimack County Registry of Deeds.

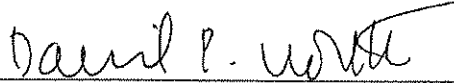
Trustee Certificate Pursuant to New Hampshire RSA 564-A:7, II: (1) The undersigned successor Trustee, as successor Trustee under the Diane L. Violette Living Trust created by Diane L. Violette as grantor under trust agreement dated March 29, 2012, has full and absolute power in said trust agreement to convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the Trustee for a conveyance thereof. (2) The trust agreement is a trust as defined by New Hampshire RSA 564-A:1, I. (3) The trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this certification of trust to be incorrect. (4) The trust is still in full force and effect, although upon the death of Diane L. Violette on October 30, 2020, the trust became irrevocable. (5) I, as successor Trustee, hereby

acknowledge that I have accepted the Trust.

Purpose of Deed: The purpose of this deed is to complete the distributions contemplated and directed under the aforesaid trust agreement establishing the Diane L. Violette Living Trust.

Transfer Tax and L-Chip Surcharge: This transfer is exempt from real estate transfer tax (RSA 78-B) by virtue of RSA 78-B:2, XI because it is a transfer that occurred by devise. This deed is exempt from the land and community heritage investment program surcharge (RSA 478) by virtue of Rule 3002.02.

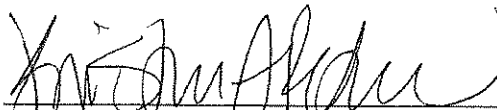
Executed as of the 10 day of January, 2022.



Daniel P. Violette, successor Trustee of the Diane L. Violette Living Trust

State of New Hampshire
County of Rockingham

The foregoing instrument was acknowledged before me this 10 day of January, 2022 by **Daniel P. Violette, successor Trustee of the Diane L. Violette Living Trust** as aforesaid, for the purposes herein intended.



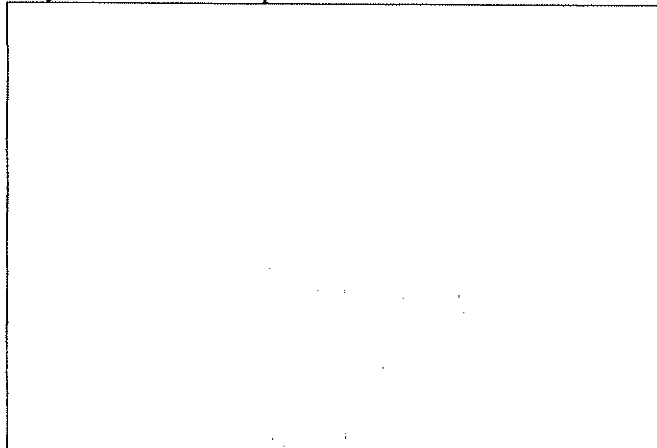
Notary Public / Justice of the Peace

Print Name:

KRISTINA A. PETERSON, Notary Public
My Commission Expires **October 21, 2025**

My Commission Expires:

*Affix Seal/
Stamp within
box*



UNAPPROVED - Minutes of June 7, 2021



Town of Warner

Planning Board

DRAFT – Meeting Minutes

June 7, 2021, 7:00 PM

No physical location for this meeting; it was conducted via Zoom.

1. OPEN MEETING and ROLL CALL

At 7:00 p.m., Chairman Ben Frost called the meeting to order and made this statement: "As Chair of the Planning Board, I am recognizing that an emergency exists and I'm invoking the provisions of RSA 91-A: 2,III (b). Federal, State and local officials have determined that large gatherings people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is essential to the continued operation of the Town of Warner government and services which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location. At this time, I also welcome members of the public accessing this meeting remotely Even though this meeting is being conducted in an unusual manner and under unusual circumstances, the usual rules of conduct and decorum will apply. Please note that all votes taken during this meeting will be by roll call vote."

ROLL CALL: Ben Frost (Chairman), 1 other in residence; Andy Bodnarik, 2 others in residence; Clyde Carson (Board of Selectmen representative), alone; Romeo Dubreuil, 1 other in residence; James Gaffney, alone; Diana Corriveau 1 other in residence (arrived at 7:13pm)

Also present: Janice Loz,(Land Use Secretary)

Absent: Don Hall (Vice Chairman), Ben Inman

2. REVIEW OF MINUTES OF APRIL 5, 2021 AND MAY 3, 2021

It was moved by Clyde Carson to approve the minutes of April 5, 2021 as amended and seconded by Andy Bodnarik to approve the minutes of April 5, 2021 as submitted.

James: Yes, Clyde: Yes, Romeo: Yes, Andy: Yes, Frost: Yes

The motion passed.

It was moved by Andy Bodnarik to approve the minutes of May 3, 2021 as amended and seconded by Romeo Dubreuil to approve the minutes of May 3, 2021 as submitted.

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James: Yes, Clyde: Yes, Romeo: Yes, Andy: Yes, Frost: Yes

The motion passed.

3. NEW BUSINESS

A. Conceptual Consultation – Michael Brown, 302 Kearsarge Mountain Road, 13-36-1, R2 District. The goal is to separate the original 3-acre house and barn parcel purchased in 1983 from a 1.3-acre lot annexed in 1984, allowing the estate to sell the house and barn on the original 3-acre parcel.

Mr. Brown said Paul and Diane Violette (his wife's parents) owned Merrimack County Telephone (MCT). When satellite towers became needed, they had a 1.3-acre lot annexed to their property in 1984 on which to place the tower and satellite system. They divorced in the late 80's and the property was acquired by Mr. Brown's mother-in-law, who until her demise earlier this year, had been receiving rent for the use of these utilities on her property. There are three siblings, for which he is the speaker. Mr. Brown and his wife (one of the siblings) would like to purchase the house as a family property but having this 1.3-acre portion (which is a value), makes things a little difficult. The tower company would like to purchase the lease agreement or the property from the family. The family would like to sell the property to the company to insure a clear title and relieve themselves of other liabilities that come with the towers.

Chairman Frost noted that Diana Corriveau had just joined the meeting (7:13pm).

Chairman Frost confirmed that the 4.1-acre property was part of the estate of the late Diane Violette. Mr. Brown answered in the affirmative. Chairman Frost asked who owned the tower. Mr. Brown said that the tower company, River Bridge Tower Company, owned the tower and equipment. He said that MCT was sold by the Violette's and other entities in 2003 to TDS. He thinks that the tower company is a landlord entity, selling rental space to others on the tower. They own all the equipment; the family was just leasing the land to them. Chairman Frost asked about the tower right-of-way on the map and if it still exists. Mr. Brown said that the right-of-way still existed and veers off that 1.3-acre lot onto the original 3 acres. There is still a road there and a gate and the tower company may need to encroach onto the 3-acre lot the Brown's are looking to purchase to continue to have access to their tower and equipment.

Andy said he was confused as to what the term "annexed" meant. Mr. Brown said Paul and Diane Violette were living at the residence and they purchased their neighbor's 1.3 acres and annexed it to their property. They did this because they couldn't get a subdivision due to the zoning regulations at the time. Chairman Frost said the statutes refer to annexations as mergers. Janice said she sees a lot line adjustment in the file for this property.

James wasn't sure how to turn the 1.3-acre property into a conforming lot. He thought perhaps they could sell and annex it to one of the abutting properties. Chairman Frost said they could also ask for a variance from the ZBA (Town of Warner Zoning Board of Adjustment). He is looking into the minimum lot size requirements for all lots or just buildable lots. Perhaps a 1.3-acre property could exist as a lot that could not be built on.

Romeo thought there was an RSA that a municipality could not create an unbuildable lot. He tried to look for it but couldn't find it. RSA 674:41 was the RSA about road frontage.

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Chairman Frost said that he has seen other instances in towns where lots were created for one reason or another, which were unbuildable.

Andy asked if there was an existing driveway for the lot. Mr. Brown said the driveway exists on the corner of the original house lot for 130' and the veers onto the 1.3-acre lot. There is an existing driveway and gate onto the property. Romeo said another concern is that while there isn't a dwelling on the lot, there is a structure. Now they are back to the definition of structure. Mr. Brown said there is a tower and a mechanical building on the site. He estimated it was about 8x16 sized building. James asked if there were other utilities coming into that property from the road. Mr. Brown said yes, electrical and communication cables. He believed they were underground from the street.

Chairman Frost noted Article VI: C1.a. (of the Town of Warner Zoning Ordinance) says every lot should have a minimum of 200' of frontage and a minimum buildable area of at least 2 acres unless the lot is served by municipal sewer. These are the operative standards they are "stuck" with in the zoning ordinance for the R2 district. He believes that getting a variance from the ZBA to the frontage and lot size requirements is the appropriate thing to do. Chairman Frost suggested that Mr. Brown work with an attorney and look at the statutes. Andy said that there are special statutes that go along with towers like this. He is bothered by the right-of-way; would an easement have to be attached to the tower lot? Probably so, thought Chairman Frost.

674:41 is the RSA that should be considered. This is pertaining to creating a lot without road frontage. Mr. Brown's next step is to go to the ZBA for a variance, and then come back to the Planning Board for a subdivision.

B. Request from the Warner River Local Advisory Committee to include the WRLAC in the application process.

Ken Milender said their mission is to provide advice and counsel to any kind of land use or environmental permit applications for anything that goes on within the Warner River corridor. The designated river corridor is ¼ mile outward from the banks, which is a ½ mile strip of land. When any kind of a land use permit goes to NHDES regarding land within this corridor they are automatically notified and are able to counsel and work with the applicants. He is trying to set up the same kind of communications between the WRLAC and the town governments. They will go to the other riverfront towns after they work on this with Warner.

Ken believes that there are various permit applications that a one-line or checkbox could be added, which asks if the property in question is within the designated Warner River corridor. If the answer is yes, there would be a statutory duty to get involved. The WRLAC would provide their opinion on whether things are fine as proposed or if more work needs to be done.

James said 483 is the RSA that governs the river management protection program. He wondered where in the RSA the half mile designation is stated. Ken didn't have the RSA in front of him but said it is in there, somewhere in the beginning of it. James didn't think it was fair to put undue burden on property owners without reason. He thinks this is a pretty significant discussion and should be discussed when the full board is present.

Chairman Frost believed they should proceed with this although a decision may not be made that night.

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Clyde asked if the intention was to be notified for renewals or for new projects. Ken said both. Clyde said generally if there was nothing changed, they give the renewal. Ken said that he agrees; if there was nothing changing, they likely won't have a problem. They may want to take a look at things and see if there are any additional best management practices that NHDES has available that might apply. It depends on the applications. Clyde asked about the timeframe for replies from the WRLAC. Ken said they could certainly impose a deadline by which responses from the WRLAC would be required.

Andy said that he reads in the statute 483:4, definitions, ("River corridor"), shows the ¼ mile (1,320 feet) from the river. It also talks about the advisory committee's responsibilities. In statute 483:8-a, III-(a) talks about advising both the federal and municipalities along which the river flows. Since they are a Board, they have somewhat of a responsibility to inform the committee.

James said the proposal shifts the burden back on the landowner instead of the local advisory committee. Chairman Frost guided James to the portion of the RSA that pertained to municipality involvement in such matters. It imposes an obligation on the Planning Board to alert the WRLAC as to what is going on. James feels that the WRLAC can be alerted by reading the minutes of meetings. Andy said he feels the burden is being placed on themselves (the Planning Board) not on the applicant. They need to make sure their notices specify the location of where the applicant is in relation to the river corridor.

Andy said any changes to the application forms have to go through multiple public hearings. Janice agreed that three readings at meetings had to be made before a change could be made. Do they need to revise their ordinance if they are going to require additional notifications? These are things to think about. Public notice must be made; it can't just be changed.

James said he didn't agree to the last point Chairman Frost made about the municipality duty. He referred to the terms "manage and regulate activity" in the statute. He didn't think this was what the Planning Board does. Chairman Frost disagreed; that is the whole point of the Board. People have to seek permission to do things. James said the Town cannot prohibit people's constitutional rights of land use on personal property. Chairman Frost agreed, subject to regulation.

Romeo said regarding permitting and extending permits, if someone wants an extension of a permit that has had an update in regulations or requirements from the state, the old regulations still apply to that permit; they aren't required to upgrade; they are grandfathered in. Also, he feels there needs to be more and better communication between the different departments in Warner. The more communication the better so everyone knows what is going on. Boards should be notified specifically and shouldn't have to look for it in the paper. James feels that is why meetings are noticed.

Clyde agreed with Romeo about notifying the different Boards so they can deliberate and give feedback. James doesn't think this is within the purview of the Planning Board and the timeline will be affected negatively. Chairman Frost agreed but said they are speaking only of the applications from the Selectmen. The statute said they have to post notice of their meetings, so that fulfills the public notice requirement. This statute also gives an affirmative command: "shall inform." They must directly inform the LAC.

James said they have clear requirements for right-to-know and noticing meetings. None

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of that exists here. Part of this revolves around the fact that the Warner River Local Advisory Committee is advisory and has no statutory requirement to be notified.

Janice asked who would be legally obligated to notify the Warner River LAC? The applicant or the land use office? Chairman Frost said in this case it would be the Planning Board. Janice wondered if it even had to be on the application at all if this is the case. Chairman Frost said it did not; it could be part of an internal checklist with the Town. Janice said it could be part of the Land Use checkbox.

Ken Milender said it is not the intent to stall or stifle any proposed plans; it is to advise the committee of land use changes within the river corridor. If they can come up with a better plan, including how to let that the applicant know whether he or she is within the corridor, he is all ears. Chairman Frost wondered why the applicant would need to know. Ken said it would make sense that the applicant know that he or she may be receiving correspondence from the WRLAC. Chairman Frost said he was just looking at the *must* versus *should* statement in the statute.

James said the landowner is obligated to respond to questions that the Planning Board has, but not the questions from an advisory board. Chairman Frost understood. Questions that the WRLAC had would be forwarded to the Planning Board. Ken agreed and said they would send a cc to the applicant and to DES in their correspondence.

Chairman Frost said this discussion would continue at their next scheduled meeting.

4. OLD BUSINESS

A. Comet LLC Conditions of Approval

Chairman Frost said he called the applicant's engineer, Ben Osgood, who shared that they have not gotten their NHDOT permit because of changed personnel in the district office or in Concord. This is the sole thing holding up the plans for the final signature. Chairman Frost asked Janice and Diane to call the district engineer to see if they can move things along. It was noted that there was not yet a driveway permit. Clyde said they haven't applied for a building permit yet. It was noted that everyone knows that work has been done on the property already; fill has been brought in and compacted. Ben Osgood has been notified that the property owner is doing this work at his own risk. Andy said it looked like some drainage work had been started as well. Chairman Frost said the property owner knows that they are not going to get a permit from the Town until the plans are signed by NHDOT.

James suggested that the Planning Board send a letter to NHDOT to let them know that the final approval is subject to their moving the plans along. Chairman Frost said that was a possibility. Andy suggested sending an email instead. James said this isn't our obligation, but it would show good faith to the landowner that the Town is behind them and their proposed project. Chairman Frost said he would speak with Diane and if the consensus of the Board was to move forward with an email, he would do so.

B. Development of Regional Impact

Chairman Frost had drafted some language and sent it to James for his review and comment. Once James has provided his comments, this next iteration would be provided to the rest of the Board to discuss. Chairman Frost would look into whether or not a hearing

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would need to be held to adopt an appendix to the Rules of Procedure. Chairman Frost suggested everyone read through the Town's Rules of Procedure to get updated.

5. COMMUNICATIONS

There were none.

6. REPORTS

A. Agricultural Commission

Chairman Frost said with regards to the Agricultural Commission, Town Meeting voted to create such a commission. One member of the Planning Board is to represent the Board on the Commission. He wondered if anyone besides James was interested. James and Romeo were both interested. Clyde suggested a new alternate to the Planning Board also could sit on the Agricultural Commission. He asked Romeo about his background in agriculture. Romeo said he lived on a dairy farm for a long period of time. Clyde said only one person was required to sit on the Commission from the Planning Board; they need not appoint an alternate.

It was moved by Andy Bodnarik and seconded by Ben Frost to nominate James Gaffney to the Agricultural Commission.

Clyde asked what James' connection to agriculture was. James said he grew up on farms. Chairman Frost added that Mr. Gaffney is a horseman.

Andy: Yes, Clyde: Yes, Romeo: Abstain, James: Yes, Ben: Yes

The motion passed.

B. Select Board Update

Clyde reported that Fire Chief, Sean Toomey has been nominated as the new State Fire Commissioner. He will be leaving his post of Chief. John Francis has been appointed as the new Fire Chief, effective immediately.

The Select Board will meet the following evening to talk about ways to open up the Town facilities and meetings. They are still working on when in-person meetings are required. They would like to set up facilities to have a hybrid of Zoom and in-person meetings as attendance is likely to be better. They are working on a proposal to do this.

Clyde said that Jonathan Lord has stepped down from the Select Board for personal reasons. They would like to find someone to fill the gap until March. James suggested to post this publicly to see who may rise to the top. Chairman Frost said he thought this had already been done. Andy noted that it was in the library newsletter.

C. EDAC – There was no meeting.

7. PUBLIC COMMENT

Andy said there was a TAC meeting on June 4th. This is held by the Central NH Regional Planning Commission - Transportation Advisory Committee. They talked about regional trails and are working on a new update, as well as the 10-year transportation plan. Among other topics, there was talk about Route 103 in Warner being a "shovel worthy project." Their next meeting is in August.

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Andy said that on June 8, a second flood management basics webinar would be held. He went to the first one and would sit in on this and report back if there was anything useful share.

James said with regards to communications, he feels the same conditions should be extended to everyone, not just one Board or another. This includes private citizens, other Planning Boards, etc. An email list could be created for interested individuals. Chairman Frost didn't think this was a bad idea but thought this kind of thing was already done. Janice said she distributes the correspondence that comes to the Land Use email to who she thinks would like to receive it. James said he had a broader sense of this communication and distribution list.

The meeting was adjourned by Chairman Frost at 8:38pm.

Respectfully submitted,

Kristy Heath, Recording Secretary

Town of Warner