



**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.us](mailto:landuse@warnernh.us)

**Zoning Board of Adjustment**

***Minutes of November 9, 2022***

**Town Hall in the Lower Meeting Room**

**1. The Chair opened the ZBA meeting on at 7:05 PM.**

**A. ROLL CALL**

<b>Board Member</b>	<b>Present</b>	<b>Absent</b>
Jan Gugliotti (Alternate)	✓	
Beverley Howe		✓
Elizabeth Labbe	✓	
Barbara Marty (Chair)	✓	
Lucinda McQueen	✓	
Harry Seidel (Vice Chair)	✓	

**Also present:** Janice Loz, Land Use Administrator, Steve Shumsky

The Chair opened the meeting at 7:05 PM. The Chair elevated Jan G. to participate as a voting member in the absence of Beverley Howe.

**2. NEW BUSINESS**

**A. Application for a Variance to the terms of Article VI.C.1. of the Ordinances**

**Case:** 2022-05

**Applicant:** Steve Shumsky

**Agent:** Keach-Nordstrom Associates, Inc.

**Address:** 30 Pleasant Pond Road

**Map/Lot:** Map 26, Lot 25

**District:** R-2

**Description:** Currently a non-conforming lot of record encroaching on setbacks. Existing structure will be demolished. The proposed new 864 square foot single family home will increase the footprint by 112 square feet. The new structure will be 2-feet closer to the right-of-way.

## APPROVED MINUTES

Chair called attention to the first order of business as an application for a variance in the terms of Article V1.C.1 of the ordinance for a currently nonconforming lot that's encroaching on the setbacks. The existing structure will be demolished and the proposed new 864 square foot single family home will be constructed, and the new structure will be closer to the right of way. The Board will go through the checklist and decide if they're going to take jurisdiction of the application.

The Chair noted she had a question about the abutter notification with regard to the residents of the manufactured housing park on the other side of the street asking Janice to confirm abutter notification.

Janice explained the applicant has been working with Assessing to develop the abutter list. There is a lack of clarity as to which residents were abutters to this property. Janice provided the Board with a map from the Assessing office which provided better detail.

The Chair asked if the map indicated if residents were within 200' of applicant. Elizabeth cited and provided RSA 672:3 outlining who are abutters within a manufactured housing park.

The Chair was still unclear about the abutters being under manufactured housing park form of ownership and voiced concern about whether or not this application had been properly noticed. The Chair further stated that the ZBA had never had a situation like this before.

The Chair (referring Board Members to the maps & checklist included with application) noted questions on other parts of the application specifying the requirements that all existing structures on the lot clearly indicate their dimensions and also floor plans for the proposed structure. The Chair noted these requirements had not been submitted with application.

Harry Seidel noted the RSA stated the tenants of the manufactured housing park were to be considered abutters and needed to be notified. Harry also stated there was a site plan but no floor plan or section or elevations. Further stating it would be difficult for the ZBA to determine the effects of the structure when you do not have this pertinent information. Expressing his concern about the Board accepting incomplete plans.

Janice confirmed the Board's requirements for this application did not include listing the requirement of a floor plan defining height (length and width were not included) and the dimensions of the proposed structure and also the dimensions of the current structure.

**Harry Seidel moved to deny the application without prejudice because it's incomplete. Lucinda McQueen seconded the motion. Roll Call Vote Tally:** Elizabeth Labbe: Yes. Harry Seidel: Yes. Jan Gugliotti: Yes, Lucinda McQueen: Yes, Barbara Marty: Yes. The variance application was denied without prejudice as incomplete.

The applicant clarified the requirements for the new application with the Board and Janice.

## APPROVED MINUTES

### 3. REVIEW OF MINUTES OF PREVIOUS MEETING: September 14, 2022 and Joint Meeting minutes of October 12, 2022.

#### A. September 14, 2022 Minutes:

Harry Seidel made a motion to accept the minutes of September 14, 2022, as amended. Jan Gugliotti seconded the motion. Discussion: None. Voice Vote Tally: 5-0. The minutes of September 14, 2022 were approved as amended.

#### B. Joint Meeting October 12, 2022, Minutes:

Elizabeth Labbe made a motion to accept the minutes of October 12, 2022, as amended. Lucinda McQueen seconded the motion. Discussion: None. Voice Vote Tally: 5 – 0. The minutes of October 12, 2022 were approved as amended.

### 4. UNFINISHED BUSINESS

#### A. Rules of Procedure Document

Board Members each reviewed the revised.

Harry brought the Board's attention to page 4 (Chair confirmed that was the starting point for review/revision).

The Chair brought Board's attention to #2 under Public Hearing Notice, the 2<sup>nd</sup> item reading: "personal notice shall be made by certified mail to the applicants and all... The Chair revised to read; to the applicants, abutters, holders of conservation preservation or agricultural preservation restrictions..."

The Chair continued reading the revisions and Board discussion continued. The Chair continued reading... "not less than 5 days before the date of the public hearing. Said notice shall contain the same information as the public notice the cost for the certified mail shall be paid in advance by the applicant." The Chair confirmed that would remain unchanged.

Harry asked why the 200' was cut out from this section. The Chair cited the 200' is noted in the definition under 'abutter', so there was no need to repeat it.

The Chair called for the Board's review of #3 further stating the reason for this was to consider regional impact, reading; "if the board determines that an application has potential for regional impact notification shall be given to any affected municipality and the concept of Central New Hampshire Regional Planning Commission in compliance with RSA 36,57."

Discussion ensued regarding the differences between applicants and their ability to effectively provide the defense of the five criteria of a Variance Application. Consensus was reached that the burden of proof is on each applicant to clearly and precisely defend the criteria. It is during the Board's review, investigation, and questioning of each applicant

## APPROVED MINUTES

that clarifies whether the applicants have defended their application for decision by the Board.

The Chair then asked to Board to review page 5, section XIV under Public Hearings noting most of the changes in it were grammatical. Chair reading; "the conduct at public hearings may be governed by the following rules at the discretion of the chair: #1, it did say "the chair shall call the hearing in session" and we would like to change that just to "The Chair shall open the hearing". #2 to read "The secretary/clerk or chair shall introduce the application, confirm that public and personal notice were given, and that all fees have been paid." Changing to " #3 "...the applicant or their designated representative shall..." change describe the purpose to present the application and review the information #4 is unchanged, #5 Abutters will be called upon to ask questions or comment on the application, need to remove an "s" after comments. #6, each person who speaks shall be required to state their name and address for the record; where before it said indicate whether they're a party to the applicant or an agent or council to the party to the applicant." Chair advised the Board does not require that because there is a form which provides this information if there is a third party involved. #7, all questions shall be directed to the chair. #8, the general public, that's unchanged except for, ask questions or comment on the application. #9, the Board will hear with interest, any evidence which pertains to the facts of the application or how the facts related to the provisions of the Zoning Ordinance, master plan, State Statues, or effect abutters and landowners; we added, all parties shall have ample opportunity to speak. #10, the hearing of the application shall be declared closed or continued by the Chair and the Board meeting reopened.

Janice referred to the change in notification, asking how someone with a "special interest" could be determined before a hearing specifying situations such as applicant(s) may abut conservation land, etc. suggesting the requirement for the applicant to provide this documentation be added to the instructions on the application. Chair agreed.

Harry referred to #10, asking if "the forward deliberation and decision" was being added. The Chair responded that was being taken out because once we close the Public Hearing and reopen the public meeting it's in the order of business that the board deliberates. So it doesn't have to be in the public hearing section. Chair suggested to revise to read "public hearing on the application."

Site Visits: The Chair noted that in the future there will be fewer reasons to have a site visit, recognizing we (the Board) try of course to avoid them because it's just another meeting where we have to go to a site and have a meeting but I can certainly imagine a space in the future where we need to visit a site in order to gather the information we need to make a decision, so it's not as if it will never happen again but they are rare.

Janice noted there were more site visits in the past. This section was developed over many iterations of the board, in order to better define the process. The Chair noted the plans were now better written removing the need for site visits.

Jan suggested adding affirmative language for Board Members with regard to site visits, suggesting language reading, normal practice is for Board Members to informally review the site without stepping on the property. In general, we rely on the site plan, under special circumstances, we will have a quorum of Board Members do a site visit.

## APPROVED MINUTES

Harry disagreed with the need for this language noting the Board Members are trained not to engage in conversation with owners or abutters.

Lucy observed that the rules were consistently descriptive with regard to application, but not as descriptive regarding site visits questioning if this was too vague for applicants to understand.

The Chair responded by reciting the rule as listed.

Elizabeth noted her understanding of visiting a site, not interacting with anyone. She noted being comfortable driving by a site, but never actually stepping on the property.

Janice added, citing her 15 years experience with the Board and the observation that some Board Members were comfortable visiting the property while others were not.

The Chair suggested revising the language to; if decided by the Board, a site visit...

Harry requested clarification.

The Chair read; first line will read “the Board Members without trespass should be familiar with the parcel under discussion, and the basic characteristics of...”

Harry noted the term “trespass” would mean no Board Member could step on the property.

Discussion ensued between Board Members regarding language for the Rules regarding Site Visits. Janice said that it is different for a woman board member to walk on the applicant land alone. Noting that neighbors have commented they do not like someone walking on the border of their property. They would be inclined to call the police. She said at least a group site walk is publicly noticed and everyone has the benefit of seeing all aspects of the property at the same time and hearing questions that other members may ask.

The Chair recognized the Board’s concern regarding the language suggesting she would research better language clarifying the Rules for Site Visits.

## 5. COMMUNICATIONS AND MISCELLANEOUS

### A. Comet, LLC., Removal of Appeal

Janice advised the Board the applicant did not get their funding and withdrew their appeal.

The Chair asked for any additional items for communication.

### B. Right of Way

Janice stated that she had talked with Matt Monahan (Warner’s Circuit Writer) and Tim Allen (DPW Director/Road Agent) who described the Right of Way as a moving target because they are different for every road, different for every property. Because of this it is best if the applicant has a survey, determining the front lot line abutting on the road and use the lot line adjacent to the roadway to delineate setbacks.

## APPROVED MINUTES

The Chair referred to the ordinances reading different districts have setbacks from the edge and there is "X" amount of feet from the edge of the public right of way. Further observing the difficulty in determining if the property is in compliance with the ordinances. The Chair advised the Ordinances needed to be written differently to provide correct determination of right of way.

Harry suggested the Planning Board do a study on Right of Way to clarify.

Janice added another option for the Board would be to choose a delineation on a property the Board could agree on.

### 6. ADJOURNMENT

The Chair asked for any further communication, hearing none the Chair advised she would entertain a motion of adjournment.

**Harry Seidel moved to adjourn the meeting. Lucinda McQueen seconded the motion. Voice Vote Tally: 5 – 0. The meeting was adjourned at 8:44 PM.**

Respectfully submitted by:

Marilyn Priest