



TOWN OF WARNER

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Zoning Board of Adjustment
Minutes of October 11, 2023

I. The Chair opened the ZBA meeting at 7:00 PM.

A. ROLL CALL

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

Also present: Janice Loz, Land Use Administrator

II. NEW BUSINESS - None

The board discussed the appointment of Derek Narducci to the position of a voting member. Harry would step down to an Alternate position on the board. The Chair noted that Jan G. and Derek had both previously expressed an interest in serving as the Vice Chair. Beverley said she had no interest in the position, neither did Lucinda. Jan G. said she felt Derek would make a great vice chair.

Beverley Howe nominated Derek Narducci as Vice Chair of the Zoning Board. Seconded by Jan Gugliotti. Discussion: None. **Voice Vote Tally:** 4 to 1 to 0. Derek abstained. Summary: The motion passed to nominate Derek Narducci as ZBA Vice Chair.

III. UNFINISHED BUSINESS

A. Continuance of Hearing for a Variance Application

Case: 2023-05
Applicant: Pier D'Aprile
Agent: Pier D'Aprile
Address: 115 Bible Hill Road
Map/Lot: Map 12, Lot 5
District: R-3 and OC-1

APPROVED MINUTES of 10/11/2023

Details of Request: Preparing for a minor subdivision for two lots. One newly created lot will meet the requirement of 250 feet of frontage. The other newly created lot will have 80-feet of frontage.

The Chair opened the continuation of Case 2023-05. The site walk was not conducted due to a family emergency for the applicant. The applicant requested the board continue the application until November so the board will have time to conduct a site walk.

Jan G. commented that she did a site walk and strongly recommended it. Derek drove by the property and would like to see where the house will go on the property. Beverley said she participated in the initial site walk a few years ago. Janice said the house is now supposed to be in a different location. Sam said he interpreted it to be close to the same location.

The Chair said the previous applicant had staked out the location of the house, while Mr. D'Aprile has a general envelope where the house is going. He has not actually sited the house, yet. The Chair asked if Sam had been on the property, and he said he drove by it.

Derek said if we were to give a variance can it come with conditions. Derek said when someone comes down the proposed driveway they are almost sitting in the neighbor's living room across the street. It is less than 10-feet away from it. He was wondering if they could make a condition that the driveway goes to the other side and doesn't face the neighbors living room. Maybe we could set a condition that there has to be evergreen trees or something there. Therefore, when someone comes down the driveway it gets blocked before they turn and is not facing that neighbor's house. The Chair said they can definitely make screening a condition. Beverley said it is not going to be a public road, the applicant may come down once a night. Derek said he is just trying to do what is right for both the applicant and the neighbor. The board questioned whether the neighbor in question was new and whether he was around during the previous application.

Derek Narducci made a motion to continue the hearing to the November 8, Zoning Board of Adjustment meeting. Jan Gugliotti seconded the motion. Discussion: None. **Voice Vote Tally:** 5 to 0. Summary: The hearing on D'Aprile, case number 2023-05 was continued to November 8.

Janice said she would work on getting dates together for a site walk of the D'Aprile property. The Chair said they could get permission to walk on the property and if there are stakes or an indication where things are going to be, that would be useful. Janice reminded the board that if the application for a variance was approved then it would go to the Planning Board for a subdivision. The board could make the Planning Board mindful of any conditions you want to put on the applicant.

Janice also told the board a letter from an abutter has been received although the board is in deliberations. The Chair clarified the board is in deliberations and usually they don't take public input after the public hearing has been closed. The Chair said they can reopen the hearing if they need to take in more information. Janice said it may be a good idea to reopen the hearing to discuss what you saw on the site walk and potentially discuss it with the applicant. The Chair said they wanted the letter as part of the packet for next month.

APPROVED MINUTES of 10/11/2023

Beverley asked if he should give a drawing of the shape of the road. Janice said she recalls the road will be shifted when it becomes a driveway. The Chair said accurate stakes in the ground would give the board a sense of where the driveway will be.

Beverley asked if the board has granted something similar in the past, such as, making one lot conforming and one non-conforming. Janice thought this was the only property of that nature. Janice said it is a hot topic, there have been a few people who have acreage in the back of the property with small frontage. Although, this is unique in that they are able to create a conforming and a nonconforming lot.

Janice said when this property was before the board previously it was at least three continuous meetings.

Beverley wondered if they should ask their attorney for advice. For instance, is this something they should do in terms of setting a precedence. Maybe as a town we should decide if we are going to do this or not. Beverley said it doesn't bother her one way or another, she was just wondering.

The Chair said they have to take each case on its merits. But, you do have to consider the cumulative effect of these decisions.

Janice said the lawyer would probably say the board only has the ordinances to follow. The board makes their decision on the merits. The board would determine whether or not this case is unique for some reason or if this property has a hardship that warrants a variance. The Chair added that wouldn't apply to every other property with small frontage and larger back acreage. Beverley said they granted this application previously but you couldn't really see the house. Janice said, right it didn't change the curb-side presence on the road.

Jan G. asked how high this building would be. The Chair said it can't be over 35 feet. Jan G. said when she goes on Google Earth and sees the topography it seems that people on Collins Road may see the house. Beverley asked if Collins Road residents are considered abutters. The Chair said every resident on Collins Road that touches the property was notified as an abutter.

IV. REVIEW OF MINUTES OF PREVIOUS MEETING: September 13, 2023

Jan Gugliotti made a motion to accept the minutes of September 13, 2023 with the corrections as noted. Lucinda McQueen seconded the motion. Discussion: The Chair will check the Zoom recording for clarifications of a few points and forward corrections to Janice. **Voice Vote Tally:** 5 – 0. Summary: The motion passed.

V. UNFINISHED BUSINESS (continued)

Rules of Procedure (ROP)

The board reviewed changes to the ROP suggested by the town's attorney and purposed wording changes offered by Harry and the Chair. The changes were to the following topics: a motion for rehearing, defining an applicant, 45-day hearing held after receipt of an appeal, including specific findings of fact in decisions and 91-A regulating email communications.

Application changes

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The board discussed the threshold for requiring a plot plan. Derek suggested anything that potentially changes an original footprint by 1,000 or 2,500 square feet. The Chair said it could be a judgment call, plot plans prepared by a surveyor may be required if the board feels they can't make a decision without that information. Derek said if an applicant is making a certain type of change, they are going to need a plan anyway, therefore, it wouldn't be an added expense. Janice said it could be both, it could be a threshold number and you could make a notation that if the board determines they need a plan it would be required. Derek said the only problem he has with "if the board deems it necessary" is it's a timing issue that could delay the process.

The Chair said if they are going for a Building Permit or a subdivision, both require a plot plan. That represents 80% at least of what comes before this board. The Chair said people don't usually come to this board with concepts.

Janice was concerned about applicants that want to see if they can get a variance or a special exception before spending money on a Building Permit or a Site Plan. If they don't get permission from the board then they are out the money they spent to get a certified plan. Janice said the board has already determined a plan of some kind is necessary. Derek agreed that it should be some type of drawing. Janice said so you have to define what the parameters are for a certified plan, or a simple plan drawn to scale. Derek said if they draw it themselves there is an accuracy issue.

The Chair said by the time they come before this board something has already been identified as being in violation of the ordinances. Sam said the fact they want to proceed sets that bar for an expense they may have to incur.

Janice said for an Equitable Waiver it makes sense to require a certified plot plan, because they have already done something they shouldn't have. The Chair said they would have had to get a Building Permit so they should already have a plan.

Janice said for a Special Exception it is just a "use" determination. Derek said it could be determined case-by-case. The Chair said really it is a variance that has to do with building (construction). Janice said a requirement for a Special Exception could be a simple plan and a certified plan if necessary.

Janice asked if an appeal of an administrative decision needed a plot plan. The Chair responded it would be a case-by-case determination.

The Chair felt a variance application should require a certified plot plan. The record should clearly show the proposed violation of a setback, for instance.

Janice passed out a sample drawing she has done as an example for applicants to include in the application.

VI. ADJOURN

Jan Gugliotti made a motion to adjourn the meeting at 8:47 PM. Beverley Howe seconded the motion. Voice Vote Tally: 5 – 0. The meeting was adjourned.

/jll