



TOWN OF WARNER

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Zoning Board of Adjustment
Minutes of November 8, 2023

***Notification of a Defect:** The Zoom recording of the November 8, 2023 ZBA hearing had faulty audio. Many of the board members' voices were inaudible. The comments that were documented are accurate. A handheld digital recorder was used to capture the Rules of Procedure portion of the meeting.

I. The Chair opened the ZBA meeting at 7:05 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.

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

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.

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Prior to board deliberations the Chair informed the public the board had entered the non-public phase of the hearing. The public comment segment of the hearing was closed on September 13, 2023. She thanked the public for attending today's deliberations. She explained that if public comments were to be taken the abutters would have to be re-noticed. That would delay the hearing another month.

Deliberations

Jan G. said almost every house in that area is going to be a nonconforming lot because the houses are all close to the road. The area was developed prior to current zoning. Everyone has a house 20 to 30 feet from the road.

Harry, who lives on Bible Hill Road, said turning on the road is difficult. Using the applicant's current logging road and proposed driveway is the best place to turn around. The board discussed making it a stipulation of approval that the applicant offer the new driveway as a public turnaround. The board concurred that probably could not be made a stipulation of the approval. Janice said although the applicant's statements offering the new driveway to continue to be used as a turnaround are on the record and documented in previous recorded minutes.

The board considered the five criteria.

The granting of the variance will not be contrary to the public interest:

Harry said in terms of public interest there is nothing that is proposed to happen on this lot that causes any harm to the public in terms of safety. Harry said the purpose of the 250-foot frontage restriction is to maintain a low level of density in a neighborhood. If the applicant was proposing to build a house close to the road it would be a different situation.

Granting the variance, the spirit of the ordinance is observed:

Harry said to him the spirit of the ordinance is to allow property owners the right to use their land for their purposes as long as it does not hurt the public domain. Also that it does not change the character or is detrimental to the town. We want people to be able to use their land but not in a way where their use is disruptive to their neighbors. So, letting someone with 40-acres of land build a house where it is permitted to build a house in that district is within the spirit of the ordinance.

The Chair and Harry had a conversation about a house being permitted to be built in the OC-1 district. The back of the applicant's property is in that district. The Chair voiced her concern with disrupting the OC-1 conservation district. Harry said a house is permitted in that district.

Lucinda said when she came to Warner, she appreciated the open space. Also driving up Bible Hill and seeing how difficult it is to turnaround and access it. She could see how it could create a hazard. If the board allows a variance on this property, they would be inviting everyone else in the area with not quite enough frontage, but enough property (acreage) in the back lot to seek a variance. It would make it difficult for the town to

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maintain the road and she thinks it would change the character of that community. There is a lot of pressure now for people to build houses anywhere.

Derek spoke about training he attended recently given by the New Hampshire Municipal. The trainers discussed the importance of making a decision on a property in a vacuum. They cautioned about making decisions based on the concern of creating a precedence. They stressed the importance of judging a case on the individual merits.

Jan G. saw the value of being cautious about creating a precedence. Jan G. said although, it is sort of cooked into the law that we cannot worry about a domino effect so, that argument (about a precedence) goes out the window and then what are we left with.

The board discussed members referencing google maps as evidence in a case. Either the maps have to be shared with everyone on the board and submitted into the record or not referenced in a hearing, if not submitted by the applicant. The board needs to be careful about sharing evidence for or against an applicant. The burden of proof is on the applicant.

By granting the variance substantial justice is done.

Jan G. said the house will not be visible from the road. There will be no more cars than one or two added to that area. If you took away (there ability to build) what would be gained, nothing.

Granting the variance will not diminish the values of surrounding properties:

The Board could not see any reason why the properties would be diminished.

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.

Sam said in terms of the agriculture and wildlife in that location he is not sure those things would be lost by granting the variance.

Jan G. said the lot is large and not forested and she doesn't think it will displace wildlife.

Beverley said you shouldn't need 250 feet of frontage when your house is a half a mile away.

Jan Gugliotti made a motion that the request for a Variance from Pier D'Aprile 115 Bible Hill Road, Map 12, Lot 5, in districts R-3 and OC-1 be approved. Beverley Howe seconded the motion.

Discussion: The Chair asked the board if they wanted conditions. Jan G. said the driveway could be dog legged to the right to avoid light pollution into the neighbor's home or to plant evergreens.

Derek distributed photos to the board, which he took at the site walk, showing the area which would need to be covered with evergreen vegetation to screen light from the neighbor. The photos became part of the Land Use record as Exhibit A, B and C. Beverley said if it were a condominium development with constant traffic it would be a

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problem. Derek said true, but even with one house it could be a nuisance and the board should attempt to address this. Derek said where that road jogs out a little bit, there is some brush. He suggests fully grown evergreens be placed there so headlights are blocked all year round. The Chair confirmed that he is asking for a natural screening. Derek confirmed. Jan G. asked if there is a need for a dog leg. Derek said it currently has a dog leg turn. Derek said when you reach the end of the driveway you are not facing the house you are facing a barn.

Conditions to be placed on the motion. Jan G. made a condition that a natural screening of evergreens be placed at the point shown on Exhibit C exiting the driveway. The Chair said what if we say natural screening to mitigate headlights shining on the neighbor's house.

The Chair asked if concerns about the stream crossing the property may also be addressed in the motion. Jan G. asked if a culvert should be addressed. Derek said the Planning Board and potentially NHDES would be consulted to address the stream. Janice said the applicant has to go to the Planning Board for a subdivision and there is a checklist they have to adhere to, and they will address runoff or wetlands.

Roll Call Vote to approve the variance with one condition: Beverley Howe – Yes. Derek Narducci – Yes. Jan Gugliotti – Yes. Lucinda McQueen – No. Barbara Marty – No.
Vote Tally: 3 – 2 in favor of approving the variance.

The Chair said anyone who has standing can appeal the decision with the Land Use office within 30 days.

B. **Discuss Rules of Procedure addition suggested by the town's Attorney.**

The Board decided to change XIV. PUBLIC HEARINGS, F., "Each person" will be changed to "Each member of the public".

Section XV. ON-SITE VISITS, was edited to include not taking testimony at a site walk. Janice said a quorum of the board is necessary for a site visit. The Chair stated that it was not a meeting. Janice said it was considered a meeting and you are supposed to have a quorum of the board. The other option is an individual site visit. You are not supposed to have only two members do a site walk. The public can only attend a site visit if there is a quorum of the board, which is conducted like a public hearing. The Chair said if it is a quorum and it's a meeting you have to take minutes. Janice said the ROP should say a quorum of the board is a public hearing and minutes should be taken. Derek asked if there is a quorum of the board is the public welcome? The Chair said, yes, we would have to notice it, open it like a public meeting. Derek said the application says they are subject to a site walk by the board, but, there is nothing that says they are subject to the public visiting the property. The Chair said we would have to decide whether there would be a quorum there. The Chair said recently it was just herself and Jan G. Janice asked if the public was there? The Chair said a couple from across the street were there. Janice said the public cannot be there if there isn't a quorum of the board, you cannot have a meeting without a quorum. The Chair disagreed. Derek said there wasn't a quorum so the public shouldn't have been allowed to attend. The Chair said the property owner invited them to attend. Janice said she will clarify with the lawyer. The Chair said at the meeting we said we were going as a group and expected a

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quorum. Janice said if you have a group site walk and you need a quorum then everyone should make an effort to be there. She said it is no different than tonight's meetings. Janice said that may be the frustration, they have had two site walks scheduled and there hasn't been a quorum of the board. Harry said the Zoning Board is new at this and will get better at ensuring a quorum.

The board addressed section XIV. Public Hearing and replacing the word "may" with "shall."

The wording for appealing an administrative decision was edited. The board discussed the minutes being available after a meeting within the 5-day timeframe. Janice said the minutes are available per request but, are not posted until approved. She said the lawyer said the recording can serve as minutes until they are available. The Chair said the moving party has to prove the minutes were not available. The Chair said the wording is taken from the RSA. Derek said if this wording was taken out of the RSA then many lawyers have already reviewed it. Sam said if the meeting minutes are not available then what, are they given more time? Harry said the minutes and the decision have to be shown that they have not been filed. Janice said the problem seems to be that the whole rehearing section is almost like a checklist. It seems like A, B, C and D have to be satisfied to appeal a decision, which isn't the case, it can be anyone of those criteria. The Chair said if the sentence they are trying to break up is kept intact it does not give the impression that each section is dependent on the other. The board agreed. Janice said the minutes and the decision can be filed within the time limit, but they can appeal a decision for another reason.

Janice said an application of an appeal of an administrative decision would also appeal a Zoning Board decision. The Chair said that is a whole different appeal. Janice said it is a generic form used for all purposes as they apply to zoning ordinances. Harry agreed. The Chair said she would rather say, to approve or deny the application for a rehearing since the word "appeal" is so broad.

Harry referenced XVI. ADDITIONAL RULES OF ORDER, C. and asked if "local land use board" could be switched out for "a Zoning Board member".

Lucinda McQueen made a motion to accept the Rules of Procedure as amended. Jan Gugliotti seconded the motion. Discussion: None. Voice Vote Tally: 5 to 0. Summary: The ROP was approved.

- C. Consider application additions and checklist changes.**
Tabled for the next meeting.

IV. REVIEW OF MINUTES OF PREVIOUS MEETING: October 11, 2023

Beverley Howe made a motion to accept the minutes of October 11, 2023 as amended. Jan Gugliotti seconded the motion. Discussion: None. Voice Vote Tally: 5 to 0. Summary: The minutes were approved.

V. COMMUNICATIONS AND MISCELLANEOUS

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- A. Concerns for the Planning Board: The Chair described the process for making proposed changes to the Zoning Ordinances for the Planning Board to consider.
- B. Derek and Janice to discuss 2023 Land Use Law Conference - ZBA Track: Janice will send the slides to members. Derek will wait until the next meeting to discuss the training until everyone can review the slides.

VI. **ADJOURNMENT**

Beverley Howe made a motion to adjourn the meeting at 9:00 PM. Derek Narducci seconded the motion.

/jll