



TOWN OF WARNER

P.O. Box 265, 5 East Main Street
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
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Planning Board Meeting I Work Session

DRAFT Meeting Minutes

Monday, September 9, 2024, 7:00pm

I. OPEN MEETING : Chair Karen Coyne called the meeting to order at 7:09 PM.

ROLL CALL

Board Member	Present	Absent
David Bates	✓	
Andy Bodnarik (Vice Chair)		✓
Karen Coyne (Chair)	✓	
Pier D'Aprile	✓	
James Gaffney	✓	
Barak Greene – Alternate	✓	
John Leavitt - Alternate	✓	
Ian Rogers	✓	
Harry Seidel – Selectboard	✓	
James Sherman – Alternate		✓

In Attendance: Janice Loz – Land Use Administration, Kathy Frenette Town Administrator

II. PUBLIC COMMENT

None

Karen Coyne explained that she would be adjusting the order of the meeting.

V. UNFINISHED BUSINESS

A. Conceptual Consultation

Applicant: Ryan Fredette

Owners: Pleasant Valley Living Trust

Trustees: Ryan Fredette and Katy-Lynne Magoon Fredette

Agent: Steven Lugar – Land Surveyor

Address: 285 Pleasant Pond, Hopkinton, NH 03229

Map/Lot: Map 3, Lot 22

District: OR-1

Description: Adjust lot line to transfer parcel to Russell Nolan – 233 Pleasant Pond Rd

Karen Coyne stated that she had several conversations with the Town of Hopkinton. Hopkinton does not feel that a joint session is required. Hopkinton will send several examples of similar situations that they have dealt with. They have been discussing whether or not it has to be a subdivision or a lot line

1 adjustment. She explained that she would like more discussion between Planning Board members and
2 legal counsel. James Gaffney suggested speaking to the Assessing Department regarding adjusting a lot
3 line for property not in Warner. He said that cannot be done. Ian Rogers asked if there is precedent for
4 this type of situation in either Warner or Hopkinton. Karen Coyne is not aware of an insistence. Janice
5 Loz cannot recall one. Harry Seidel believes it can be done. Karen Coyne reiterated that the Planning
6 Board will seek guidance from the town’s legal counsel before the work session.

7
8 **IV. NEW BUSINESS**

9 A. Michael Smith, Selectboard member discussed Map 17, Lot 017, Map 17 Lot 015.

10 Mike Smith asked for the Planning Board’s input on selling town owned parcels, being Map 17 lots 017
11 and 015. The Planning Board reviewed both lots. Karen Coyne stated that lot 017 is .1 acre in Warner
12 and lot 015 is 6 acres and is land locked. Mike Smith explained that he has presented this to the
13 Conservation Commission, they are doing a site walk Wednesday. James Gaffney and Karen Coyne
14 agreed that given the information provided, they do not see a reason to keep the property as town
15 owned. Harry Seidel stated that there are numerous town owned parcels that could be sold. David
16 Bates reminded Mike Smith to provide the Planning Board with documentation on the process for land
17 sales. Nancy Martin Chair of the Conservation Commission stated that there will be a site walk on
18 Wednesday. She stated that the only concern is access for other abutters.

19
20 **James Gaffney made a motion seconded by Ian Rogers that the Planning Board recommend**
21 **selling the properties. Motion passed WHO abstained 6-0-1**

22
23 Discussion on the motion:

24 David Bates asked for clarification on the need to vote or provide input as was stated previously. Mike
25 Smith stated that it is his preference to have a vote.

26
27 B. Conceptual Consultation Applicant: Richard Antoine

28 Owners: Richard & Heidi Antoine

29 Agent: Richard or Heidi Antoine

30 Address: 576 Kearsarge Mountain Road, Warner NH 03278

31 Map/Lot: Map 18, Lot 039

32 District: R3

33 Description: Subdivide 12.5 acres lot into two lots. One lot will be 8.5 acres, and the second
34 lot will be 4 acres.

35
36 Richard Antoine asked for guidance in subdividing his property for his daughter who would like to build
37 on the 4 acre lot. David Bates asked for clarification on road frontage. Barak Greene stated that the tax
38 maps indicate 531 feet, but a survey would confirm road frontage. He is hesitant to say the lot can be
39 subdivided without knowing how much buildable land is on the lot. Richard Antoine stated the land is
40 flat, no wetland and the back of his property has a steep drop off to a brook. James Gaffney stated that
41 the minimum frontage is 250 feet and minimum buildable area of the lot is 3 acres. Karen Coyne
42 suggested filing a minor subdivision application as a starting point.

1 C. Conceptual Consultation

2 Applicant: Andrea and Joseph Brochu Owners: Russel Osborn
 3 Agent: Andrea and Joseph Brochu Address: 304 Bean Road, Warner, NH 03278
 4 Map/Lot: Map 13, Lot 18-3
 5 District: R-2
 6 Description: Subdivide and build a small house on the empty lot with road frontage on Willaby
 7 Colby Lane.
 8

9 Andrea and Joseph Brochu called in by zoom. Andrea Brochu informed the Planning Board that
 10 her grandfather owns 3.5 acres on Bean Road, and they are looking to subdivide the area with frontage
 11 on Willaby Colby Lane to build. She acknowledged the minimum lot size for that district is 2 acres.
 12 She stated that they will have the necessary frontage on Willaby Colby Lane, but the lot would be 1.25
 13 acres. She asked if the proposal is feasible, and she stated that she understands that she would need to
 14 go to the zoning board. Karen Coyne and David Bates advised Andrea Brochu that she has the ability to
 15 go to the zoning board for a variance. Andrea Brochu explained that she was advised to discuss the
 16 concept with the Planning Board for any suggestions.
 17

18 **David Bates made a motion seconded by Harry Seidel to recommend the applicants go to the**
 19 **Zoning Board of Adjustment for a variance of the minimum lot size requirement. Motion passed**
 20 **unanimously.**
 21

22 Discussion on the motion :

23 James Gaffney asked if there is enough frontage. Karen Coyne confirmed there is enough frontage.
 24 James Gaffney questioned the proximity to the river. Karen Coyne stated it is across the road and
 25 another lot between. He asked how much of the lot is buildable. Barak Greene suggested the applicant
 26 secure a land survey before going for the variance. Harry Seidel asked if the land was wet. Andrea
 27 Brochu stated that at the top of the lot towards Bean Road is a wet area. She stated that the area they are
 28 looking at is fairly flat. Andrea Brochu asked what the set back is for septic and leach field. David
 29 Bates advised her to look at the DES website for those requirements. James Gaffney suggested she also
 30 look at the shoreline protection to confirm she has enough distance between her lot and the river. Janice
 31 Loz advised Andrea Brochu that she will provide her with the Planning Board's recommendation and
 32 coordinate with the ZBA.
 33

34 D. Conceptual Consultation

35 Applicant: Roman Catholic Bishop of Manchester, a corporation sole
 36 Owners: Catholic Orders of Foresters
 37 Agent: Devine Millimet & Branch, Professional Association
 38 Address: 511 Kearsarge Mountain Road, Warner, NH 03278
 39 Map/Lot: Map 18, Lot 37
 40 District: R-3 and OC-1
 41 Description: Seeking a zoning determination whether the following uses are permitted as a
 42 matter of right or otherwise. Church and other religious purposes including, but not limited to
 43 meetings/retreats, mass services, religious gift shop, Knights of Columbus meetings, Cursillo;
 44 youth retreats. Catholic school professional days, priests retreats and seminars, Life Teen, NH;
 45 Catholic formation events, adult marriage; rectory, residency for religious order(s); diocesan
 46 ministry offices.
 47

48 Laura Gandia from Devine Millimet and two other individuals (names inaudible) addressed the Planning

1 Board. Laura Gandia stated that the property is formerly known as Magdalen College. She stated that
2 the site is split between two zones, R-3 and OC-1. She stated that the purpose of this discussion is to
3 receive confirmation from the Planning Board that the proposed intended uses are allowed. She
4 reiterated that many of the proposed uses are the same uses that the college enjoyed. Laura Gandia
5 stated that her client is not planning to add structures or change any building footprints but seeks to use
6 the existing buildings and layouts. She informed the Planning Board that the Roman Catholic Bishop of
7 Manchester proposes the following uses: Church and other religious purposes including, but not limited
8 to meetings/retreats, mass services, religious gift shop, Knights of Columbus meetings, dinners, events,
9 fundraising activities, meals, family weekends, youth activities, youth retreats, Catholic school
10 professional days, priests retreats and seminars, Life Teen, NH events, Catholic formation events,
11 diocesan ministry offices, a rectory, residency for religious orders, celebration of the sacraments;
12 weddings, funerals, baptisms and confirmations. Laura Gandia stated that the proposed uses are not
13 substantially different from the prior uses of the college and will not negatively impact the community.
14 She stated that this is a straightforward request which falls under NH RSA 674:76.

15
16 Pier D'Aprile asked for clarification on what the Catholic Orders of Foresters is. He was informed that
17 the Catholic Orders of Foresters is the holder of the debt for Magdalen College. The property is under
18 contract for purchase. The new owner (Roman Catholic Bishop of Manchester) is seeking confirmation
19 on the allowable uses of the property before the contract is executed. Karen Coyne stated that RSA
20 674:76 relates to the religious use of land and structures which states that no zoning ordinance or site
21 plan review regulation shall prohibit regulate or restrict the use of land or structures used for religious
22 purposes. Karen Coyne asked about the fundraising aspect that is not detailed in the application. Laura
23 Gandia stated that she did not detail every use that the Diocese would have which is why the
24 applications states "but not limited to". James Gaffney stated that he would like a better understanding
25 of all the uses that were stated earlier and he asked for clarification on the Knights of Columbus uses.
26 He was advised that if the New Hampshire the Knights of Columbus all wanted to meet they would use
27 this location for spiritual retreats. Barak Greene spoke about the possibility of large events bringing
28 increased traffic to the area. Karen Coyne asked if anyone would be housed at the site. She was
29 informed that there is a possibility but no change in use. James Gaffney stated that a college was the
30 previous use, and an educational tax exemption was applied. He stated that there is a difference
31 between religious and educational. James Gaffney asked for clarity on the housing usage, long term,
32 short term. The representative stated the only change is from educational to religious. Laura Gandia
33 clarified that the same type of events will be held as was held by the College. James Gaffney asked for
34 estimations of traffic for the events. Laura Gandia stated that that would not be relative to the use
35 determination, which would apply more accurately under a site plan review. She stated that if a meeting
36 for religious purposes brings 5 people or 50 people it is done for religious purposes and is allowed per
37 the zoning regulations. James Gaffney stated that there is a change in use from educational to religious
38 and it would be his expectation that there would be a site plan review.

39
40 David Bates stated that it is his opinion that as long as the events / uses are for religious purposes that is
41 allowed. He stated that if a different use is considered there would need to be a conversation. David
42 Bates stated that the zoning ordinance would not require any additional work from the applicant. Barak
43 Greene agreed, he is concerned about the traffic. He spoke about community engagement. Laura
44 Gagne stated that the Roman Catholic Bishop of Manchester very much wants to be a part of the
45 community and engage with the citizens of Warner. Harry Seidel stated that the college did receive tax
46 exempt status for parts of the property but there were other areas that were taxable, and the Town of
47 Warner relies on that tax revenue. He explained that the tax revenue received was between \$52,000 and
48 \$90,000 annually. He asked if the diocese is going to work with the town? He asked if the residents of

1 Warner would be permitted to use property for passive recreation, or the athletic facilities? Harry Seidel
2 asked if the new owners would seek the religious exemption for the property and will the new owners
3 work with the Town as the previous owners did? Pier D'Aprile spoke about the financial aspect of
4 various events, the loss of property taxes for the town and zoning or set back issues. Laura Gandia
5 stressed that the discussion on the determination of use of the property cannot be tied to the property tax
6 or zoning implications. She stated that the questions raised regarding taxes and zoning would come at a
7 later date. Karen Coyne clarified that the list of uses raises questions for the Planning Board. She
8 explained that some uses are clearly for religious purposes and others are questionable. John Leavitt
9 stated that it is not fair or correct to tell the new owners to treat the Town like the old owners. He stated
10 that the purpose of this discussion is zoning not taxes, traffic or any of the other issues mentioned. He
11 stated that in his opinion they meet the requirements. John Leavitt stated that the Zoning Board would
12 be the deciding body not the Planning Board. Karen Coyne explained that the Zoning Board does not
13 handle conceptual consultations and that is why they are before the Planning Board.

14
15 David Bates spoke about religious protection. He stated that the applicant is here for a use
16 determination. James Gaffney would like to hear more specifics on the various uses. He stated that he
17 would like this to come back for site review. James Gaffney stated that RSA does not exempt the
18 religious entity from regulations, the law prevents Towns from imposing undue burdens or prohibiting
19 uses. He does not have enough information yet to make a decision. Karen Coyne stated that it would be
20 appropriate to receive input from the Town's legal counsel. Laura Gandia stated that it is not possible to
21 capture every activity. Ian Rogers agrees with David and John statements.

22
23 Harry Seidel spoke about the liability of Kearsarge Mountain Road. He spoke about the concept of
24 creating an emergency road in that area. Harry Seidel stated that the new owners could consider
25 assisting the Town in that mitigation. Laura Gandia stated that would be premature as they had not yet
26 purchased the property. She assured the Planning Board that they do want to be good neighbors. Barak
27 Greene spoke about the benefit to the Town of having visitors. Pier D'Aprile agreed with James
28 Gaffney's comments. He feels pressured because the determination of use has other implications.
29 Karen Coyne stressed that this is conceptual consultations. She stressed that nothing binding comes
30 from a conceptional consult. Laura Gandia explained that they need a determination of use to move
31 forward with the purchase.

32
33 **David Bates made a motion seconded by Barak Greene that the Planning Board determine that**
34 **this is under use 1 in community facilities church and other religious purposes.**

35
36 Discussion on the motion:

37 Karen Coyne stressed that this is a conceptional consultation and are non-binding. She explained that a
38 motion will create a problem. David Bates believes that the Planning Board has made motions relating
39 to conceptual consultations in the past. Pier D'Aprile cautioned that input from the Town's legal
40 counsel has not been received. James Gaffney stated that he does not doubt that the uses are for religious
41 purposes, but he stressed that some members do not feel that they have enough information. David
42 Bates stated that he feels the Church is being held to a different standard. He requested that the
43 members, who feel that some of the uses listed are not religious to specify those uses. Pier D'Aprile
44 stated that he is looking for clarity on the uses. Karen Coyne does not agree that the Church is being
45 held to a different standard. She stated that the Planning Board has asked questions, just as they have
46 other applicants, but they have not received answers to their questions. She stated that she is not willing
47 to walk away from the request to receive legal counsel input. David Bates stated that he is willing to
48 amend the motion to include "contingent upon the recommendation from the Town's legal counsel."

1 **AMENDED Motion made by David Bates seconded by Barak Greene that the Planning Board**
2 **determine that this is under use 1 in community facilities church and other religious purposes**
3 **contingent upon the recommendation from the Town's legal counsel.**

4
5 Discussion on the amended motion

6 Mike Smith stated that there are a lot of questions, but this is only a consultation which leaves him
7 confused as to what the Planning Board is voting on. He stated that it would be nice to have answers to
8 some of the questions raised. He stated that having that information before they go to the Zoning Board
9 might be helpful. Laura Gandia reiterated that they are not going before the Zoning Board, and they do
10 not have to. She stressed that they do not own the property yet so they cannot say how many weddings
11 or different events will take place. She stated that the purpose for this discussion is to seek a
12 determination of use. Karen Coyne called a point of order that there is a motion on the floor.

13
14 Harry Seidel feels the motion is too narrow. He stated that it is more than having legal counsel give an
15 opinion on whether something is a religious use. Barak Greene stated that if the application only stated
16 religious use under proposed use and remove the detailed list the matter would be settled. He believes
17 the question is can the application do religious use on an R-3 lot and the answer is yes. David Bates
18 agreed. He stated that if in the future non-religious use of the property occurs there is a process to
19 address that infraction. He stated the process is a zoning complaint. Pier D'Aprile expressed concern
20 that RSA 674 stated that the applicant does not have to abide by the zoning restrictions. He is afraid of
21 the implications as it relates to enforcement of zoning regulations. James Gaffney clarified that RSA
22 674:76 stated that the state or municipality may not substantially burden or prohibit, it does not exempt
23 the applicant from regulations. Ian Rogers stated that the applicant is here for a determination of use
24 letter and there is not a set process for doing that, so they were asked to come to the Planning Board for
25 a conceptual consultation. Pier D'Aprile stated that he does not have information to make that
26 determination. David Bates explained that the Land Use Office advised the applicant to come to the
27 Planning Board. Janice Loz did not feel it was her place to issue a use determination letter.

28
29 James Gaffney stated that he is not aware of anything in the zoning ordinance or rules of procedure that
30 refer to the Planning Board for the determination of use. Barak Greene suggested providing the
31 applicant with a copy of the Town's ordinance under community facilities item #1 Church and other
32 purposes in District R-3 are permitted. Pier D'Aprile asked about District OC-1. James Gaffney stated
33 that the Planning Board would not make a use determination.

34
35 **David Bates withdrew the motion to allow the land use office to provide input on how use**
36 **determinations are made.** Pier D'Aprile would like to hear from the town's legal counsel.

37
38 **Harry Seidel made a motion seconded by James Gaffney to continue the conceptual consultation**
39 **to the next Planning Board meeting to allow consultation with the legal counsel. A roll call vote**
40 **was taken James Gaffney YES, David Bates NO, Harry Seidel YES, Ian Rogers NO, Pier**
41 **D'Aprile YES, Barak Greene YES, Karen Coyne YES Motion passed.**

42
43 Discussion on the motion:

44 David Bates stated that he withdrew the motion to allow Janice Loz to explain how use determination
45 letters are done. Harry Seidel wants to hear from legal counsel regarding the information that is lacking.
46 David Bates stated that as a member of the Planning Board he wants clarification on regular operations
47 of the land use office but that cannot be done with the motion on the floor. Barak Greene called the
48 question. Ian Rogers asked for clarification on the question for legal counsel. Karen Coyne stated that

1 legal counsel to weigh in on the use. She stated that she is not of the mind that the Planning Board
2 writes letters of use determination. She stated that the meeting minutes would document the Planning
3 Board decision. Harry Seidel explained his intent of the motion is not just to determine if this is
4 religious use but also to have legal counsel give an opinion on the description of the religious use that
5 has been given to the Planning Board.

6
7 Laura Gandia expressed her disappointment with the decision. She explained that she has done her due
8 diligence and still does not have an answer regarding how to obtain a determination of use letter. James
9 Gaffney reiterated that the Planning Board does not provide a determination of use. Laura Gandia stated
10 that a deadline for the purchase is looming. David Bates asked for clarification on past letters issued by
11 the land use office. Janice Loz outlined the informal conversation and letters that the Land Use office
12 has provided. Karen Coyne asked if the past letters were legally binding letters. Janice Loz stated that
13 the letters are not legally binding. Janice Loz stated that the applicant wants something in writing
14 before they purchase the property. She explained that she directed the applicant to the Planning Board
15 because the Planning Board is the body who develops the ordinances and use tables. Karen Coyne
16 referred to the language in RSA 674 that specifically says that a preliminary conceptual consultation
17 shall not bind either the applicant or the Planning Board. Harry Seidel explained the list of uses
18 provided by the applicant gave members of the Planning Board pause. Ian Rogers stated that the Town
19 of Warner does not have a determination of use letter to provide. He explained that several members
20 have stated that they are of the opinion that the main use of the property is for religious purposes. Laura
21 Gandia asked for clarification on what uses the board is questioning. Pier D'Aprile spoke about his
22 struggle with the two districts R-3 and OC-1. He feels the outlined uses are too broad.

23
24 Barak Greene asked if the Planning Board members would indicate if they agreed that the R-3 portion of
25 Map 18 Lot 37 permits a church and religious activities on it. All members agreed that the R-3 portion
26 does permit a church and religious activities on it. Matt (LAST NAME inaudible) from the diocese
27 stated that the Church strives to be a good neighbor. He stated that fundraising events would not be big
28 events. He stated that the bookstore would be a religious bookstore. He stated that their intent is not to
29 expand or operate a commercial enterprise. He stated that they want to be good neighbors and serve the
30 community. He stated that the primary focus is spiritual. James Gaffney stated that comments made by
31 a board member implied that the Planning Board can just make things up that he disputes. He stated
32 that the Planning Board is constituted by State Law furthermore the zoning ordinance is written
33 according to those laws. He explained that the zoning ordinance is adopted by the Planning Board and
34 then the ordinance goes to Town meeting to be voted on. He explained that he is not comfortable with
35 the Planning Board doing something they have never done before, and it does not have a process for.
36 David Bates stated that conceptual consultation provides guidance on the ordinance and the sense of the
37 Board. He stressed that the sense of the board is not making things up. James Gaffney reiterated that
38 the Planning Board does not have a determination of use document therefore cannot provide the letter.

39
40 Karen Coyne stated that healthy discourse is expected and healthy. She pointed out that it is good that
41 there is a difference of opinion on the Board. She supports the discourse as long as the conversation
42 remains respectful. She thanked everyone for their conviction.

43 44 **III. MINUTES: July 1, July 15, August 5 and August 19, 2024.**

45 **Barak Greene made a motion seconded by David Bates to approve the minutes from July 1, 2024,**
46 **as amended. Motion passed.**

47
48 Karen Coyne stated that the remainder of the minutes will be reviewed at the next meeting.

1 **UNFINISHED BUSINESS CONTINUED**

2 B. CIP -

3 Ed Mical from Emergency Management spoke about the CIP relating to the emergency access road off
4 of Kearsarge Mountain Road. He stated that he is not asking for funds, it is in the hazardous mitigation
5 plan. He asked that it continue as a place holder in this year’s CIP. He stated that the plan is to go
6 through it and conduct a feasibility study and that will make the determination on where it is going to
7 go. He stated that until the feasibility study is done, he cannot estimate the cost. Ed Mical stated that
8 the feasibility study will be done by an engineering firm. Ed Mical fund balance is \$12,000. He stated
9 that in the past a request for proposal was sent out, but the Town did not receive any proposals. He
10 would like to try again.

11
12 **VI. REPORTS**

- 13 a. Chair's Report- Chair, Karen Coyne
- 14 None
- 15 b. Select Board - Harry Seidel
- 16 None
- 17 c. Regional Planning Commission - Derek Narducci, Ben Frost
- 18 None
- 19 d. Economic Development Advisory Committee
- 20 None
- 21 e. Agricultural Commission - James Gaffney
- 22 None
- 23 f. Groundwater Protection Committee-Andy Bodnarik
- 24 None
- 25 g. Housing Advisory Committee - Ian Rogers provided an update indicating that master plan draft
- 26 is close to completion. Next meeting is 9/24/24. There was a discussion regarding the
- 27 expectations of the Housing Advisory Committee. David Bates suggested adding the topic of
- 28 the HAC to the work session to get some definitive amendments for the charter. Karen Coyne
- 29 does not see any reason to amend the charter if the recommendations are made.
- 30 h. Regional Transportation Advisory Committee
- 31 None

32
33 **VII. COMMUNICATIONS**

34 None

35
36 **VIII. PUBLIC COMMENT**

37 Ed Mical stated that he would be willing to work with a member of the Planning Board on the changes
38 to the flood plain ordinance.

39
40 **XI. ADJOURN**

41 The meeting adjourned at 10:01 PM
42 Respectfully submitted by Tracy Doherty