



TOWN OF WARNER

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Zoning Board of Adjustment Minutes of February 14, 2024

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.A. Application for a Special Exception

Case: 2024-01

Applicant: Paul Fasoli

Agent: Paul Fasoli

Property Owner: Paul and Cassandra Fasoli

Address: 130 Couchtown Road

Map/Lot: Map 11, Lot 40

District: R3

Description: Truck upfitter and tow truck assembly. Seeking a Special Exception to TABLE 1 Retail and Services, Section 15, Miscellaneous Business Repair Services of the Warner Zoning Ordinance. As recommended by the Planning Board.

The Chair elevated Sam Carr to a voting member in place of Jan Gugliotti, who was absent.

The Chair asked if anyone had a conflict of interest with case 2024-01. There were no conflicts identified by members of the board. The Chair asked if the case raised concerns about regional impact. There were no concerns raised by the board.

The Chair went over the hearing procedure for the applicant, public and the board. The Chair noted there was a problem with two of the abutters missing from the original notification list. She asked the Land Use Administrator, Janice, if she was able to contact the two abutters. Janice said she contacted both abutters by phone.

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The Chair noted there was a referral from the Planning Board included with the application. Planning Board member David Bates wrote the referral following a December Conceptual Consultation with Paul Fasoli. The Chair said there wasn't a locus map, but she did not know if that was needed, since it is a use variance and not an area variance. Janice asked which they are hearing the Variance application or the Special Exception. The Chair said the Special Exception would be first.

The Chair asked the board if they found the application to be complete.

Beverley Howe made a motion to accept the application as complete. Derek Narducci seconded the motion. Discussion: None. **Voice Vote Tally:** 5-0 in favor of accepting the application as complete.

The Chair asked the applicant Paul Fasoli to come to the table and talk about the business he is proposing and elaborate on the use.

Paul said that he assembles tow trucks, in a vehicle upfitting business. They arrive as a cab and chassis. Basically a cab and a bare frame and then he puts a truck body section on the back of the frame.

The Chair asked how they arrive on the property? Paul responded they come as a cab and chassis. The Chair said so the cab is driven to where it's going to be assembled with the chassis attached to it. Paul confirmed that was accurate.

Paul said once he is done with it, he literally swaps it out for the next one and keeps a rotation going.

The Chair asked what was the process, is there welding and drilling?

Paul said yes, all of the above. He is basically cutting the frame to length. Sometimes he bolts onto the end of the frame, sometimes welds the plate on. Then he sets the body on and continues bolting the rest of the attachment points. Then the hydraulics are hooked up to the bed or wrecker body, whatever the application is. He hooks up the wiring for the lights and the light bar.

The Chair asked if there is any storage of things like hydraulic fuels? Paul said hydraulic oil. That's all he said he needs.

Derek asked if he stored gases like acetylene.

Paul said, no. He is doing welding and uses CO₂. Which is non-flammable.

Derek asked if he was doing any painting.

Paul said he does paint where the weld is, otherwise there would be no painting. Just touch-up sections, here and there.

Sam asked about the volume of hydraulic oil that would be on-site.

Paul said 55-gallon drums and he usually empties one before ordering another and swapping it out for another one.

The Chair asked what kind of volume or how long does it take to do one of these trucks?

Paul said roughly a week. It's roughly 40 hours to 50 hours depending on how many accessories. The truck that is in the picture (exhibits in packet) has all extra lights which

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took a week and a half to almost two weeks. A picture of the truck was on the television screen in the room for the public to view and shared on Zoom.

The Chair asked where is the work space that is pictured in the photos?

Paul said that is his shop that he is renting down in Allentown.

Derek asked if he is just a one man show, right now?

Paul said, yes.

Beverley asked Paul how close he was to his neighbors?

Paul said one of them is pretty close.

Beverley asked if what he does is noisy?

Paul said at times like grinding, you can imagine grinding, making noise. But it's not all day. It's like 20 minutes of grinding and then he is done for the day.

Beverley said so you really don't have any next door neighbors like here in town (thevillage)?

Paul said, no. The closest neighbor to him, he can see the house.

The Chair said it is in a R3, so they have to be at least 40 feet from the property line. So the closest would be 80 feet. Beverley said, okay so that is far.

The Chair asked Paul to start going through the application. The Chair reminded the board they are trying to distinguish between the two uses. Beverley asked what were the differences and does everybody know what these two differences are? The Chair said they need to talk about that as they go along.

Derek asked if the special exception runs with the property. The Chair said they can't change the use without coming back to the board.

Beverley asked if this was an in-home business? The Chair asked Paul if that was what he went to the Planning Board for was a home occupation. Paul said, yes. Beverley said she didn't understand why the board, got this application. The Chair said because in the use table both of these uses, "Miscellaneous Business and Repair Services" require a Special Exception. But if we decide that this is more apt to the Automotive Repair use then it needs a variance.

Beverley said so it is not a general in-home business category? Sam said he was looking up the home occupation that is permitted has a square footage ratio, and the new building is larger than the home.

Paul said, for the home occupation it has to be 25% or less of the home. Beverley confirmed she remembered that and that it has been so long since the board has done an in-home business.

The Chair asked Paul to read through the application and to feel free to expand on his responses.

A. The use requested is identified in the Zoning Ordinance as one which may be approved by the Zoning Board in the district for which the application is made:

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The use is mechanical in nature but no auto repair will be performed. For example, engine rebuilds oil changes or brake jobs, none of that is going to be happening. This use is strictly for assembling new tow trucks.

B. The requested use is essential or desirable to the public convenience or welfare:

He will be providing new trucks for the community businesses to potentially buy and probably utilize for public services. He can support local businesses that offer similar services as a subcontractor. Paul said the business Charlesbois come to mind stating that they do something similar down by Exit 7. There is another one by Exit 6. The Chair said, yes it used to be Caterpillar now it's something else. Paul said they do something very similar to what he does, they install a bunch of plows.

Paul said also desirable to the public would be to support local businesses.

C. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals or welfare:

He said he is not open to the public, so I won't be having any foot traffic or vehicle traffic added. All business activities will be performed inside of the proposed structure. He only works on one truck at a time, so there is no storage and multiple trucks outside.

The Chair asked Paul and the Board if he had anything else he wanted to say before opening it up to the public. Paul felt the pictures he submitted described the business well.

The Chair opened the public hearing portion of the meeting. Starting with abutter comments.

Paul Iverson at 160 Couchtown Road. He said as much as they support their neighbor and hope the business is successful. He said they hike and bike and walk their grandkids on that road. He strongly feels that they don't need any more truck traffic on the road. They feel that the value of their house and property is going to be negatively affected by being close to basically a commercial piece of property. When he looked up the Warner home occupation, the conditional use permit, it clearly says sales and maintenance of motor vehicles is prohibited. So why are we even talking about this? This has already been shut down. So there's talk about some kind of variance and to me that sounds like a very commercial property. We are strongly against that to the point where if this goes ahead, we will hire legal representation and fight this at every instance we can. So this is going to be a big battle. You can't turn this into commercial property. He said this is residential this is out in the country and we are talking about putting in a commercial business there. He knows it's going to be one truck a week, but that's how it always starts out. You know, he's going to want to grow. We don't want it next to us, he is an abutter and does not want to be next to a commercial property. He will be forced to try to protect his asset and we're going to fight so that we are not next to a commercial property.

Derek asked Mr. Iverson if they happened to be the house that's the closest to this proposed business? (inaudible response)

Kendra Howell said they submitted some written communication. She felt badly about this because they live next to the applicant, and they do not know him. She said as a business owner, she understands why he would want that business and she doesn't blame him for that. But they feel very strongly that she doesn't want to live next to a big garage. She looks at the drawing and it (the garage) looks bigger than the house. Couchtown Road is very rural. As she wrote in her comments and e-mail, they don't travel, they love their home, they

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love the neighborhood. They have a pool in their backyard, and they spend a lot of time out there and it is very close. When she heard Derek say, the applicant is a one-man operation, for now. She thought, we all want to grow our business and she is very concerned. She said you don't have to drive too far to see other homes and areas that are decimated really by lots of vehicles, lots of big buildings and our street is beautiful. She is very concerned even though she supports his desire for his business.

(speaker not identified) She said it is not personal it is not against anyone. It's the idea it doesn't matter who wants to do it. She said they are retired and walk on their property, behind the applicant's property, with their dogs and with their grandkids. There is going to be large equipment that's going to be coming in and out on a road that is in bad condition. Heavy equipment going up and down that road, it's just not something she wants and is against it.

Robert Havey said his concern was with fluids and stuff, they have a brook that runs behind his property which comes from the applicant's property. He was concerned about hydraulic fluids, gasoline and stuff like that. The brook crosses several properties, and he was concerned about the fluids and storage of hydraulic fluid, fluid, gasoline, diesel and things like that.

Derek confirmed that they are on well water. Mr. Havey responded, yes.

The Chair asked for any more comments from the abutters or public.

Kendra said they too are concerned about their property value and this property is really close to theirs. Her husband is retired, and they are going to live there for the rest of their lives. So they are concerned about it.

The Chair asked if there were any more comments or questions. Janice asked what are the proposed hours of operation? Paul said, right now typically Monday through Friday, roughly 7:00 to 5:00. Since he is working by himself, he is kind of all over the place. The Chair confirmed that he is currently traveling to a garage space that he is renting every day. Paul said, correct.

Paul Iverson asked the Chair what was next in the process.

The Chair said the board will discuss whether or not this use identified in use table is the best match. Now that they have expanded on what this business is, what is the best fit for Mr. Fasoli's operation. If the category of Business Repair and Services is not and if the use that requires the variance for Automotive Repair is a better fit, then we will deny this application for not being the correct use table item. Then the board will go on to the variance for the Automotive Repair and Service Garage. So, we are going to repeat this whole process one more time tonight, possibly everybody's testimony will already be part of the record. So, the public won't have to restate what you have already told us, but you will be given an opportunity to add to your statements. So when I close the public hearing now, we will be reopening it for the second hearing. So the abutters don't have to be finished if you think of more things that you want to add.

The Chair closed the public hearing. The Chair asked the board if they agree that the first thing to consider is, is this the right use from the use table? The Chair said the two uses are right next to each other. She said under retail services it does distinguish Miscellaneous Business Repair from Automotive Repair and Service Stations or Garages. So the use table

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makes that distinction. When she went online, anything that she could find about business repair services had in parentheses, excluding automotive. It seems that in our use table and in the business definitions I found online, those two things are separate.

Derek said they are mutually exclusive.

The Chair agreed and said so they make that distinction that automobile repair and business repair are not the same animal.

Lucinda said so it is excluded. The Chair said it is excluded from being a miscellaneous business repair. The Chair said Janice did include in the board packet some definitions of uses.

Derek said it mentioned automotive in a different category from Business Services.

Sam said in David Bates' initial letter he mentioned consideration as the wholesale transportation and industrial light industrial firms, that seems more in keeping with the business. Business and Repair Services is just on a smaller scale.

The Chair wondered if the board was at a point where they want to deny this use category and go on to consider the automotive repair service station or garage use category for a variance.

Derek said he knows it is not a repair shop, he gets that. But anything automotive was totally separated from this category. So he is for denying this use and moving on to the variance application. He doesn't think this is really applicable to what's going on here.

Beverley said she agreed.

Lucinda said she is comfortable with the variance.

Sam agreed, as well.

Derek Narducci made a motion to deny the special exception because it is not applicable to the retail services miscellaneous business repair services category 15 in TABLE 1 Use Regulations. Beverley Howe seconded the motion. Discussion: None. **Roll Call Vote:** Beverley Howe – yes. Derek – yes. Sam Carr – yes. Lucinda McQueen – yes. Barbara Marty – yes. **Vote Tally:** 5 – 0. The Special Exception was denied.

II.B. Application for a Variance

Case: 2024-02

Applicant: Paul Fasoli

Agent: Paul Fasoli

Property Owner: Paul and Cassandra Fasoli

Address: 130 Couchtown Road

Map/Lot: Map 11, Lot 40

District: R3

Description: Truck upfitter and tow truck assembly. Seeking a Variance to the terms of TABLE 1 Retail and Services, Section 14 Auto Repair, Auto Service Station or Garage of the Warner Zoning Ordinance. As recommended by the Land Use Office.

The Chair said they are going to do the same process for the variance application. The criteria for the variance is a little bit different. There are 5 criteria. The Chair said the board is now going on to the second application, the application for a variance.

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The Chair said this application is seeking a variance to the terms of TABLE 1, Use Regulations, Retail and Services section 14., Auto Repair, Auto Services Station or Garage to the Warner Ordinances.

The board considered whether the application for the variance was complete as submitted. **The Chair, Barbara Marty, made the motion to accept the Variance application as complete. Derek Narducci seconded the motion. Discussion: None. Voice Vote Tally: 5 – 0.** The application was accepted as complete.

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

Paul Fasoli said his business will have little to no effect on the public and little to no disturbance to the neighborhood. As stated before, all business activities will be performed inside this proposed garage and there won't be any outside storage of vehicles or parts.

#2 Granting the variance substantial justice is done because:

Paul said this is essentially a glorified home occupation. Meeting most of the criteria of home occupation. It supports economic growth in the community with small businesses. The business fits all the stated criteria for a home occupation except for square footage.

Derek said in terms to the response to criteria #1, is the garage going to have AC or will it be open during the day when it's a decent day out where noise and smell is going to transfer to the neighborhood.

Paul said he plans on insulating the garage. It would cost quite a bit to heat and cool. He doesn't plan on doing AC. The installation obviously will cut down on noise.

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

Paul said this is more like a lifestyle change for me. I will be able to work from home and be closer to my family as well as spend more time with my family. Less time commuting. I will save money not only on commuting, but real estate rental costs as well.

#4 Granting the variance will not diminish the value of surrounding properties because:

The proposed structure is roughly 200 feet from the roadway, making it hardly visible. All processes will be performed inside the garage so it won't add any noise or visible disturbance.

Beverly asked how large was his property, how many acres total?

Paul said 19 acres.

#5 Literal enforcement of the provisions of this ordinance would result in an unnecessary hardship? Meaning that owing to special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on this property.

Paul said he was having a hard time finding a building to work out of in the area that fits his needs and budget, which ultimately jeopardizes the future of his business. A lot of people hear that the business is mechanical, and they think automotive repair and they just instantly denied him and shut him down. They don't even want to rent to him.

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The Chair said what sorts of places would accept this business, would you need a lift and some specialized equipment?

Paul said he doesn't need a lift. But a lot of automotive repair garages for cars would allow his business, but the building itself is too small, they are designed for cars not trucks. Trying to find a larger bay that would fit a truck he thinks they are in such high demand right now that a lot of people are just renting them out for storage.

The Chair read the last part of criteria #5 saying, "the proposed use is a reasonable one, and explain what is unique about the property that makes this specific zoning restriction unfair and unreasonable to the purpose of the provision, and that it is a reasonable use".

Paul said he believes this is a reasonable use due to the low impact it will have on the community. The property has substantial land to support the structure and enough natural habitat for it to blend in with surrounding structures. Public sites do not diminish the character.

The Chair opened the public hearing. Stating that if the public had additional comment for the different criteria to raise their hand and state their name.

Paul and Barbara Iverson. Paul said there were a couple sections there that he disagreed with. The value of the surrounding properties will definitely go down as a result of this basically commercial property being forced upon us. The back part of his property where he is proposing to put the shop would be actually much closer to the Iverson's property. Paul said they go on out on that property every day and it would be a bothersome to see a structure back there that's right next to his property. Maybe it is going to be a good thing for Rugged Truck LLC. It's not going to be good for all the abutters, and it also is specifically not part of the home occupation which was called out. Home occupation specifically says that you're not supposed to do any maintenance on motor vehicles. So it should be shot down right there.

Barbara Iverson said if this is allowed what will stop someone from wanting another vehicle repair shop somewhere else on the road. This is going to open up a can of worms. You're allowing a commercial business in a residential area, which to her is just wrong. She moved to the country to be in the country, not to be near a commercial building that's repairing or rebuilding large trucks. The trucks would be going up and down the road once a week, or twice a week, or every day. Whatever it is, is just not acceptable.

Kendra Howell said it is hard for her to disagree because of a couple of points and wanting to be at home and cut down a commute. She can't fault his reasons for that at all. It's 19 acres and that is a lot of land. But it's all in the spot right there. You go out the back of the house to the pool and it is right there, it's not like it is 19 acres back. She wishes for him (the applicant) to have what he wants she just doesn't want it outside my property. She doesn't want bad relations with her neighbors.

Robert Eaton asked what was the size of the vehicles that will be worked on.

Paul said the smallest would be one ton. Moving up to like a single axle Freightliner.

Janice opened the pictures on the television screen for everyone to view the size and samples of trucks, which were provided by the applicant. Paul pointed out the picture of the biggest truck he has ever worked on, which was 26,000.

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Robert Havey said that his property is far enough away that it wouldn't be a problem. He felt (bad) for another neighbor that was located right beside the applicant. His biggest concern was the fluids going into the brook.

A man (? unidentified) in the public said he was just wondering if that size truck is allowed on their road in the winter during the frost-heave season.

There was crosstalk that determined the road was paved. The end of the road may be dirt and may have restrictions.

Derek said that is a question they could get answered from the Department of Public Works, if necessary.

Janice asked a question that Lucinda had inquired about, are the trucks empty when they would come to the applicant's business. Is there a load on the trucks?

Paul said there is no load on the truck he is working on.

The Chair clarified that the trucks are carrying what he is going to assemble onto them.

Paul said, yes. The smaller trucks probably would be just below the six-ton limit that they're referring to. The largest is probably one ton heavier, probably like seven tons.

Janice asked Paul if he works on one truck at a time, or multiple trucks. Paul said one at a time, for at least a week or a week and a half.

Paul Iverson was concerned about his property value being adversely affected by this business. He felt this was unquestionably a bad idea for all the abutters. He asked the board if they would want this business by them.

The Chair said, well that is why there are public hearings so that the board can hear from everybody and consider all of the concerns when debating applications. The board really appreciates that people show up and participate in this process because that's the only way it works.

Derek asked if the Zoom participants wanted to speak. No one wanted to speak who was attending via Zoom.

Paul Iverson asked if the board made a decision now and that was the end of it?

The Chair said, what will happen now is that once the public hearing is closed, the board will go into deliberations and talk as a board. If this use is denied, then it's denied and it won't go back to the Planning Board. If the use is granted, then the applicant will go back to the Planning Board because he still would have to go through their process.

Barbara Iverson asked if they will be notified of the decision.

Beverly and Derek said you will hear right now, tonight. Derek said it will be posted eventually too.

The Chair called for any last question or comments, hearing none, closed the public hearing and opened the board deliberations.

Beverly said she felt really sorry for this man, but she is in the exact same position where she lives. Her neighbor across the street has opened a hotel. The owner doesn't live there, she resides in Massachusetts. But they are renting the house and she doesn't want a hotel across the street with nobody in it. People are coming for weekends and whole weeks and

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party. There are people nobody knows and it's a quiet street. It's a very nice neighborhood, so I almost feel like I need to almost recuse myself because, you know, because I feel so strongly that if people around don't want it, how can you upset so many people's lives? To her that's not okay. She feels very sorry for his business. But you know, we all have to live together.

The Chair said the decisions that this board have to make are not easy.

Beverley said they are very difficult, absolutely.

Derek suggested the board go over the criteria one at a time. The Chair said, absolutely because they will have to have their findings of fact.

#1 the variance will not be contrary to public interest.

Sam said one point that might be contrary to the public interest is the wear and tear on the road. The other thing he thinks is the objections of many of the abutters. He feels that is the two significant issues.

Derek said he was in agreement with Sam. As far as what would happen with the road if it is restricted at certain times of the year that's is definitely going to affect the public interest. Derek said although we don't know for sure without talking to someone of authority. Derek said it would be a definite no if the Highway Department said the road can't handle that type of thing at certain times of the year.

The Chair said her concern on this is a little more about the noise, especially in the summer when the doors are open and there's grinding and noisy drilling and welding. She knows the area and it's very quiet in the summer. You'd like to hear the birds singing and the peepers in the spring. To have that quality-of-life issue diminished for the abutters I think is not in the public interest. Especially when there are at least two established limits on what can be done for a home business, which includes not having utilizing the space bigger than 25% of the total floor area of the dwelling. So this building is going to be more than 200% bigger than the existing dwelling. So, it's very commercial, very far outside of what is allowed. Also specifically number "T" under home occupation types says the sale, rental, maintenance and repair of automobiles, motor vehicles and small engines shall not be permitted as a home occupation. Also with the concerns about the hazardous hydraulic oils possibly getting into the water. You know, that is a fear.

Beverley said we have zoning in this town for commercial and residential, and if you remember, we turned down an apartment in a commercial area lately within the last two years. She does not approve of putting commerce in the residential area, absolutely not, ever.

The Chair said so she thinks that is against the public interest? Beverley concurred.

#2 The spirit of the ordinance.

The Chair said the R3 is a residential zone, meant for residences and farming. That is why so many lots in the R3 zone are big pieces of property, because most of that was originally either sheep farms or food farms. Beverley interjected or, family farms. The Chair said that is the spirit of the R3.

Lucinda said I tend to respect the abutters' wishes highly in cases like this. She thinks there should be a distinct separation between businesses going into residential areas.

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Sam said he doesn't think that the variance meets the spirit of the ordinance because it is residential and you know there are some exceptions for business related items, but mainly agricultural. Farming and forestry and other industries of that nature and he thinks that this doesn't, meet that spirit.

Lucinda said she and her husband are self-employed. She is an artist. She drew little pictures up in my studio for 40 years and no one knew she was there. Her husband had his own little shop. No one knew he was there. She thinks in that case it's fine.

Beverly said she has been to two meetings in the last couple of weeks and sitting in the back of the room most people around me could not hear what anybody was saying up here.

The Chair said they will try to do better and speak up.

#3 By granting the variance, substantial justice is done.

The Chair said this is always a tough one because it closely aligns with the spirit of the ordinance. She framed the question as 'is the loss to the applicant outweighed by a gain to the public'.

Sam said he is not sure there is significant gain to the public.

The Chair said except to the immediate of abutters.

Sam said the gain to the individual doesn't outweigh the loss to the public. He does not think there is gain to the public at all. He thinks there is loss to the public and the gain to the individual does not make up for that.

#4. The variance will not diminish the values of surrounding properties because.

The Chair said it will be 200 feet from the roadway. The board heard testimony tonight from the abutters that they feel it will affect the property values. The Chair said that is a hard one to measure when you're talking about something that doesn't exist yet.

Sam said this brings to mind when Town Counsel said about how do you prove that when it hasn't happened yet.

The Chair said it is up to the applicant to present some sort of support for saying that it won't diminish the values.

Derek said it is not like anyone can talk to the real estate board and ask them what they think. It is really just the board's judgment.

Sam said there isn't any real evidence either way, it's just experience.

The Chair said the board can go from your own experience. But if the board looks at roads or country roads that have become industrialized. They occupy some of the old farms and things, it does happen in places. Do you feel that makes the places less valuable. It is a judgment call, although I'm sure there probably is a study somewhere about, businesses creeping into residential areas and what kind of effect that has, but we weren't presented with anything to refute that.

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

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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.

Derek said this is hard for him because he was a one man show where he lived. He had a woodworking business. He knows it is tough out there right now and it kills him to say, but #5 means a hardship as far as the special conditions of the property. This property doesn't really have any special conditions that would qualify as a hardship. Yes, it's a hardship if you can't build there but that has nothing to do with the actual property itself. So he doesn't think #5 meets any of that criteria. It would be a different story, like the recent variance on the flagpole shaped land because that was a strange shape. We don't have that here, so it doesn't meet that criteria.

Sam said the hardship here is the zoning that it is in and that isn't any different than any of the surrounding lots. It is not the appropriate zoning for the business. It's not really grounds for a hardship. Derek concurred.

The Chair and Derek agreed it was a personal hardship not based on the property itself. The Chair said they were not diminished and that it is a real tangible hardship from the perspective of the applicant.

Sam asked if the board had discussed the second part of the criteria the reasonable use? The Chair said that also comes into what distinguishes the property from other properties. Sam and Derek agreed there wasn't anything about the property that was different.

Beverley asked if there were other businesses on Couchtown Road. The Chair said there is a farm, noting that farming businesses cannot be restricted.

The Chair said the board doesn't see anything unique about this property that makes this specific zoning restriction unfair.

Beverley said she didn't understand why the Planning Board sent this application to the board why didn't they make this decision? The Chair said because it falls under the use of the property which falls within this board's responsibility.

Sam Carr made a motion that we deny the application for variance for case 2024-2 for Paul Fasoli, 130 Couchdown Road Map 11 Lot 40 in a R3 district. Denying the variance to the terms of TABLE 1 Retail and Services section 14., auto retailer, auto service station or garage. Beverley Howe seconded the motion. Discussion: None. Roll Call Vote: Beverley Howe - Yes. Derek Narducci – Yes. Sam Carr – Yes. Lucinda McQueen -Yes. Barb Marty - Yes. Vote Tally: 5 – 0. The application for a variance was denied.

III. UNFINISHED BUSINESS – Application Revisions

The Chair distributed copies of the Equitable Waiver application. The Chair asked the board to compare the current application with the proposed changes. She noted the formatting will not change. The criteria were changed to be in line with the RSA. The previously condensed version was not helpful to the applicant. Harry had said the 91-A wording is in the instructions and did not have to appear on the application.

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The Chair suggested we table this discussion until all the members can be present. The board generally agreed. The Chair said they will discuss the Equitable Waiver and Appeal of Administrative Decision as well.

Derek suggested having copies of the application forms ahead of time to review and make notes before the next board meeting. The Chair agreed.

The Chair said they could put a description next to criteria in parenthesis so people understand the criteria better, (such as, is the advantage to the applicant outweighed by the disadvantage to the general public).

Sam said it seems applicants are just writing a response to the criteria which is not really directed at the force of the rule. The Chair said, yes, because they don't know for instance what the spirit of the ordinance really means. Derek said or identifying a hardship.

Janice said she does meet with all the applicants, and they go through and discuss all the different criteria/conditions together. She does try to help them navigate the applications. The actual wording for the criteria is in the ordinances so they can't be changed. The Chair said the Board can certainly suggest explanations.

IV. REVIEW OF MINUTES OF PREVIOUS MEETING – January 10, 2024 (partial)

The minutes of January 10, 2024 were tabled until the minutes could be completed and all members of the board present to review the minutes.

Janice said she uploaded the recording of the minutes to an AI transcription. She had to listen while editing the text. She didn't have to type as much but it was still time consuming. There were some awkward formatting. Sam said he had heard mention of AI Microsoft Co-Pilot but, didn't know much about it. Derek said the Free Mason's use an AI program he will look into the name for that program. Janice said the transcription has some odd text interpretations of the audio, that has to be fixed.

V. COMMUNICATIONS

The Chair updated the board about court cases versus the Town of Warner Zoning Board of Adjustment. The court upheld the board's decision on McLennand. Also, the Gaffney DeFabrizio case v. the Town of Warner is upcoming. The board decided in the future a link to court decisions would be sufficient for members rather than printed copies.

The Chair asked why the board received property cards as part of the abutter's list and not a list. Janice said the property information is public. The Chair said although this is information the town voted not to have this information shared with a wider audience. The board felt it would best for the applicant to complete the abutter's list in the application and not attach the property cards.

The board discussed the Housing Committee, the survey and public engagement. Janice encouraged members to fill out the housing survey. Beverley said some people said they didn't want to complete it because it was too personal. The Chair said they can skip any portion of the survey they are not comfortable with.

Janice said the Planning Board is working on the non-conforming section of the Zoning Ordinances. Janice said she and Harry worked on the ordinance. Harry wrote it. The board briefly discussed the amendment.

APPROVED Minutes of 02/14/2024

VI. ADJOURNMENT

Beverley Howe made a motion to adjourn. Lucinda McQueen seconded the motion. All members were in favor. The meeting was adjourned at 8:48 PM.

/jll