



## 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.gov

# Zoning Board of Adjustment AGENDA

Wednesday, June 12, 2024  
Town Hall Lower Meeting Room  
7:00 PM

Join Zoom Meeting: <https://us02web.zoom.us/j/84102051310> Meeting ID: 841 0205 1310 Passcode: 1234

### I. OPEN MEETING and ROLL CALL

### II. NEW BUSINESS

#### A. Application for a Variance

Case: 2024-04  
Applicant: Daniel Chaloux  
Agent: Daniel Chaloux  
Address: 138 Iron Kettle Road  
Map/Lot: Map 07, Lot 040-1  
District: R-3

**Details of Request:** Proposed garage 40-feet from the edge of the right-of-way. Needs a 10-foot variance to the terms of Article VII, Section C.2.

### III. UNFINISHED BUSINESS

A. Consider application additions and checklist changes. [Variance](#), [Special Exception](#), [Equitable Waiver](#), [Appeal from an Administrative Decision](#).

### IV. REVIEW OF MINUTES OF PREVIOUS MEETING – May 8, 2024, and May 22, 2024

### V. COMMUNICATIONS AND MISCELLANEOUS

### VI. ADJOURNMENT (Motion, Second, Vote)

Note: Zoning Board meetings will end no later than 10:00 P.M. Items remaining on the agenda will be heard at the next scheduled monthly meeting.

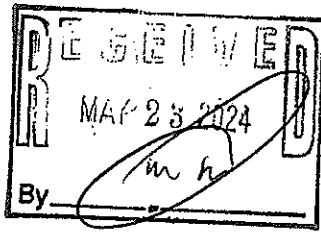
All interested parties are invited to attend. Correspondence must be received by Noon on the day of the meeting.

## Applicant's Checklist

Have you included		Item	Land Use Office finds	
Yes	No		Yes	No
		Complete and sign, the proper application for the type of appeal (request).	X	
		If a <b>variance</b> is requested, it must be based on a <b>referral</b> from the Board of Selectmen or the Planning Board and included with the application.	n/a	
		A list of all abutters within 200 feet of the boundaries of the property on the supplied form. Accuracy is the applicant's responsibility. The abutters list must be obtained from the Town of Warner's Assessor's records.	X	
		An attached copy of any order, notice of violations or other communications received from either the Board of Selectmen or the Planning Board that pertains to the property. (If applicable)	n/a	
		<b>Plans shall include:</b> <ul style="list-style-type: none"> <li>Clearly indicate where the site is located (locus map) and what is proposed drawn to scale.</li> </ul>	X	no scale noted
		<ul style="list-style-type: none"> <li>Show for the "lot of record" the boundary lines with footage on all sides.</li> </ul>		X
		<ul style="list-style-type: none"> <li>A copy of the lot's deed (to verify Owner).</li> </ul>	X	
		<ul style="list-style-type: none"> <li>Name of the road the lot fronts on.</li> </ul>	X	
		<ul style="list-style-type: none"> <li>Include all existing structures on the lot, clearly indicating their dimensions, distance from other structures and distance from abutting property line, drawn to scale.</li> </ul>	X	
		<ul style="list-style-type: none"> <li>For a proposed structure, include all of the above a floor plan with dimensions, (length, width, and height).</li> </ul>		no height X
		The applicant has <b>paid fees</b> (see application for specific fees). <b>Check</b> made out to the <b>Town of Warner</b> .	X	
		Application must be received 15 days prior to the next ZBA meeting.	X	
		All property owners must sign the application.	X	
		Authorization from Owner must be signed to designate someone to speak on behalf of the property owner(s). (If applicable)	n/a	



Zoning Board of Adjustment



# TOWN OF WARNER

P.O. Box 59  
Warner, New Hampshire 03278-0059  
Land Use Office: (603)456-2298 ex. 7  
Fax: (603) 456-2297

## APPLICATION FOR VARIANCE

This application is subject to NH RSA 91-A which affords the public access to government records and meetings.

Application Fee		Notification Fee	
Residential	\$50.00	Abutter Notification 5 x \$8.00	\$40.00
Commercial	\$100.00	Applicant Notification	\$60.00

50.00  
40.00  
60.00  
\$150.00

\* Fees for publication of the Legal Notice will be invoiced and must be paid prior to starting the hearing \*\* Please use attached form to list all abutters within 200 feet of the boundaries of the property.

Applicant/Contact Person Information			
Name of Applicant:	DANIEL CHALOUX		Date: 5/12/24
Applicant Mailing Address:	138 IRON KETTLE RD.		
Town:	WARNER	State:	N.H. Zip: 03278
Telephone Primary:	Alternate:		
Owner of Property Information			
Name of Owner:	DANIEL CHALOUX		Date: 5/12/24
Owner Mailing Address:	138 IRON KETTLE RD.		
Town:	WARNER	State:	N.H. Zip: 03278
Telephone Primary:	603-848-1402 Alternate:		
Location and Description of Property			
Map #:	07	Lot #:	040-1 Zoning District: R3
Address:	138 IRON KETTLE RD. WARNER N.H. 03278		
Will a Site Plan Review approval be required by the Planning Board?	Yes		<input checked="" type="radio"/> No
Proposed Use:			
<p><b>Details of Request:</b> Please feel free to include additional information on separate attached pages. Be sure to put the name of applicant and date on each sheet. (indicate number of sheets attached _____)</p> <p>proposing to build a garage 40 feet from the edge of the right of way. Need a 10' foot</p>			

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

The undersigned hereby requests a VARIANCE to the terms of:

Article: VII, Section: C.2. of the Warner Zoning Ordinance

**For a Variance to be granted, the following five conditions must be met:**

(For more information reference the Warner Zoning Ordinance Article XVII and RSA 674:33.)

Please explain in writing how your project meets each of the five (5) conditions, in the space provided on the following pages. If you do not use the space provided refer to attached pages.

The applicant seeking a variance must be prepared to prove these conditions at the Public Hearing. In order for the public hearing to proceed there needs to be responses to all five conditions.

The five conditions are:

1. Granting the variance will not be contrary to the public interest because:
2. By granting the variance, the spirit of the ordinance is observed because:
3. By granting the variance substantial justice is done because:
4. Granting the variance will not diminish the values of surrounding properties because:
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
  - 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; **and**
    - ii. The proposed use is a reasonable one.  
*[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]*
  - B. **Or**, if the criteria in 'A' are not established, then 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.  
*[Explain what is unique about the property that makes the specific zoning restriction unreasonable]*

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

It will not be in the roadway, it will not be blocking anything and the public will not be affected in any way.

2. By granting the variance, the spirit of the ordinance is observed because:

It will be easier to drive in and out of safely and will be better for plowing

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

4. Granting the variance will not diminish the values of surrounding properties because:

It will not affect the surrounding properties in any way. It is on a side street with no visible houses

#3 will not Affect  
No Neighbors,  
will not Affect SNOW PLOWING  
For the Road,  
will still be back 50 Feet  
Plus. From Road

#5 No other Garage to  
Put CARS in or equipment  
LAWN ~~mowers~~<sup>w</sup>ect.  
mowers

I give JANICE Permission  
To ~~add~~ Add this in  
THANK YOU JANICE

**Answer - 5.A.i. and 5.A.ii. - or 5.B.**

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

- 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;

**and**

- ii. The proposed use is a reasonable one.

*[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]*

**Or, if the criteria in 'A' are not established**

- B. 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.

*[Explain what is unique about the property that makes the specific zoning restriction unreasonable]*

**ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED**

**Authorization from Owner(s):**

1. I (We) hereby designate \_\_\_\_\_ to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [Zoning Board].
2. By submitting this application I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the Zoning Board may at some point during the review process schedule a Site Visit, which will be duly posted.
3. I (We) understand that the Zoning Board will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.
4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s): Daniel Chaloux  
Debbie Carter

Date: 5/12/24  
 Date: 05/16/24

Signature of Applicant(s), if different from Owner: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Printed name of person(s) who signed above:

DANIEL CHALOUX

For Zoning Board of Adjustment Use Only		
<b>Assigned Case #:</b> <u>2024-</u> 04		
Date Received at Land Use Office: <u>May 23, 2024</u>		
Received by: <u>Selectboards office</u>		
Fees Submitted:		
Amount:	Cash:	Check #: Other:
Abutters' List Received: <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span>		
Date of Review:	Date of Hearing: <u>June 12, 2024</u>	Date Approved:



6

MERRIMACK COUNTY RECORDS *Kathi L. Guay* CPO, Register

Return To:

Daniel Chaloux  
Desiree Kalloch  
138 Iron Kettle Road  
Warner, NH 03278

1449  
2 -  
25 -

3675.00

**WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, That, **William E. Carruth and Karen R. Carruth, Trustees of the William E. Carruth and Karen R. Carruth Revocable Trust**, u/t/d June 3, 2009, with a mailing address of 1424 Route 103, Newbury, NH 03255, for consideration paid, grants to **Daniel Chaloux and Desiree Kalloch**, both single individuals, with a mailing address of PO Box 199, North Sutton, NH 03260, as joint tenants with rights of survivorship, with WARRANTY COVENANTS:

A certain parcel of land, with the buildings thereon, in the Town of Warner, County of Merrimack and State of New Hampshire, being shown as Lot #1 on Plan entitled "Property of Richard A. Cook and Rebecca L. Courser" dated September 19, 1993, and prepared by Pierre J. Bedard, L.L.S., which is recorded in the Merrimack County Registry of Deeds as Plan #12883 said tract of land being bound and described as follows:

Beginning at a 1" iron rod in a stone wall on the northern side of Iron Kettle Road which point is the southwest corner of the described premises; thence running

N 13° 24' 55" W a distance of 378.56 feet to a 1" iron rod; thence turning and running

N 86° 47' 37" E a distance of 354.41 feet to a 1" iron rod; thence turning and running

S 12° 40' 39" E a distance of 378.02 feet to a 1" iron rod in a stone Wall at said Iron Kettle Road; thence turning and running along a stone wall and Iron Kettle Road

S 87° 56' 55" W a distance of 135.07 feet to an endpoint of the stone wall; thence continuing along said stone wall and Iron Kettle Road

Warranty Deed  
William E. Carruth and Karen R. Carruth Revocable Trust to  
Daniel Chaloux and Desiree Kalloch

*WEC KRC*

S 86° 8' 48" W a distance of 214.50 feet to the point of beginning.

Said parcel of land contains approximately three acres, more or less.


Meaning and intending to describe and convey the same premises as conveyed to William E. Carruth and Karen R. Carruth, Trustees of the William E. Carruth and Karen R. Carruth Revocable Trust by virtue of Deed dated June 23, 2009 and recorded at Book 3140, Page 203 of the Merrimack County Registry of Deeds.

This is not homestead property of William E. Carruth and Karen R. Carruth.

Pursuant to New Hampshire RSA 564-A:7 II: (1) The undersigned Trustees, William E. Carruth and Karen R., as trustees of the William E. Carruth and Karen R. Carruth Revocable Trust, and as grantors, under trust dated June 3, 2009 have full and absolute power in said trust agreement to execute, sign and deliver any deed or instrument necessary to sell and convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the Trustees have said power or is properly exercising said power or to see to the application of any trust asset paid to the Trustees for a conveyance thereof. (2) The Trustees have received all necessary or desirable direction from the beneficiaries of the trust agreement. (3) The trust agreement is a trust as defined by New Hampshire RSA 564-A:1 I. The trust has not been revoked and is still in full force and effect.

Executed this 13 day of February, 2015.

William E. Carruth and Karen R. Carruth  
Revocable Trust

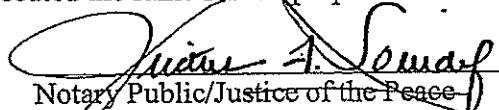
  
William E. Carruth, Trustee

  
Karen R. Carruth, Trustee

State of New Hampshire  
County of Merrimack

Before me, this 13 day of February, 2015, personally appeared, William E. Carruth and Karen R. Carruth, Trustees of the William E. Carruth and Karen R. Carruth Revocable Trust, known to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.



  
Notary Public/Justice of the Peace

JUDITH F. SOURDIF  
Notary Public - New Hampshire  
My Commission Expires July 2, 2019

My Commission Expires

Warranty Deed

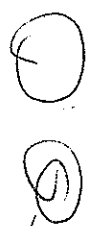
William E. Carruth and Karen R. Carruth Revocable Trust to  
Daniel Chaloux and Desiree Kalloch

my wood fence

I OWN ALL This

Field

Road



67' Fact middle to GARAGE

edge 40 Foot



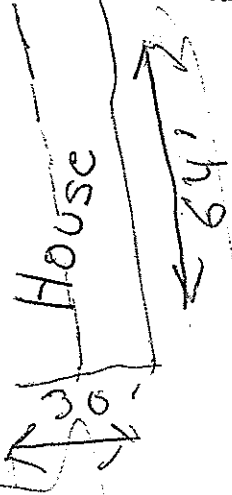
middle of Rd 77'

edge OF Road 65'

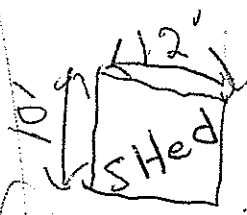
32'

Field

AS Rd. goes UP it MOVES AWAY FROM Home  
Road |||



Driveway



Field



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### ABUTTER'S NOTICE OF PUBLIC HEARING

Zoning Board of Adjustment Meeting

Town Hall Lower Meeting Room and via Zoom

**June 12, 2024**

7:00 PM

**Join Zoom Meeting:** <https://us02web.zoom.us/j/84102051310> **Meeting ID:** 841 0205 1310 **Passcode:** 1234

The Town of Warner Zoning Board of Adjustment has received an application. The ZBA will hold a Public Hearing on the request in accordance with NH RSA 675:7. Notification of this hearing is being made to abutters. The hearing will give you the opportunity to look at the proposal, ask questions and make comments. The application will be available online Monday before the meeting on the Zoning Board of Adjustment web page, accessible under the "Cases" icon.

Written comments will be made a part of the record of the meeting and must be *received by 12:00 PM noon on the day of the meeting Wednesday, June 12, 2024*, mailed, emailed or delivered to the address above.

#### Application for a Variance

**Case:** 2024-04

**Applicant:** Daniel Chaloux

**Property Owner:** Daniel Chaloux and Desiree Kalloch

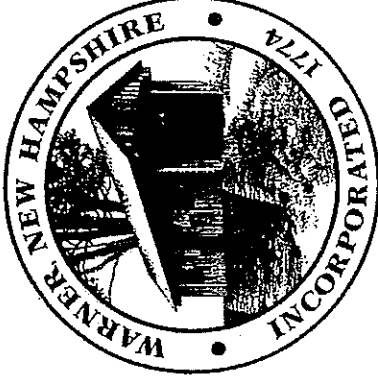
**Address:** 138 Iron Kettle Road

**Map/Lot:** Map 07, Lot 040-1

**District:** R3

**Description:** Proposed garage 40 feet from the edge of the right-of-way. Needs a 10-foot variance to the terms of Article VII, Section C.2.

Note: Zoning Board meetings will end no later than 10:00 P.M. Items remaining on the agenda will be heard at the next scheduled monthly meeting.



Permit #: 2018-52

BOARD OF SELECTMEN  
OF THE  
TOWN OF WARNER, NH  
PERMIT TO BUILD

Date: October 2, 2018

This certifies that Chaloux has permission to build.

Purpose of Building Garage

Physical Address: 138 Iron Kettle Rd

Map 7 Lot 40-1

Provided that the person accepting this permit shall in every respect conform to the terms of the application on file in this office, and the provisions of Building Code of the Town of Warner.

[Signature]  
Building Inspector

TO BE POSTED IN FULL VIEW AT BUILDING SITE



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**Zoning Board of Adjustment**  
**Minutes of May 22, 2024**

**I. The Chair opened the ZBA meeting at 7:03 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)	✓	
James Zablocki (Alternate)	✓	

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

6 **II. NEW BUSINESS**

7 **A. An Appeal of Administrative Decision**

8 **Applicant:** Linda Dymont

9 **Agent:** Ariana McQuarrie, Alfano Law, PLLC.

10 **Details of Request:** Pursuant to RSA 677:2-3, the abutter is petitioning for the  
11 Zoning Board of Adjustment to rehear Case No. 2024-03. This case relates to the  
12 granting of a variance on April 10, 2024 for Case 2024-03, 225 Couchtown Road,  
13 Map 15, Lot 053-3, in the R3 district. Property owner: James McLennand.

14 **\*No Public Testimony\***

15 **Board Deliberation**

16 The Chair confirmed that James Zablocki (new alternate) had read the minutes and is  
17 current on the case. James confirmed that he had read the minutes. The Chair said the  
18 alternates are welcome to participate up until the point that a motion is made.

19 The Chair said they have a motion for a rehearing before the board tonight. It is the only  
20 agenda item. The board will be looking to see if there is any information in the request for  
21 the rehearing that illustrates that the board has made a mistake or has done something  
22 illegal.

## UNAPPROVED – Minutes of May 22, 2024

23 Jan G. started the deliberations by saying that she had been thinking about nothing but  
24 this for two weeks. She really wanted to create a decent argument, and then she saw the  
25 lawyer responses to Land Use/board questions and she was even more convinced of her  
26 position.

27 The Chair reminded the board the legal responses that were sent to all members were  
28 confidential and to be used as a reference.

29 Jan G. said she read through the minutes of the last meeting and concluded that almost  
30 everything that the complainants or petitioners said was either irrelevant or insinuated  
31 malice on the part of Mr. McLennand. For example, the insinuation part was the timetable  
32 which showed the property owner didn't do something when he knew or didn't know. Or  
33 whether the Building Inspector said stop all work or waterproofing, etc. Also, how the  
34 garage is going to look as a whole and if it's going to be close to the abutter's hot tub. She  
35 didn't see any convincing arguments from the abutters. But, she thought the bigger  
36 question was that they did not measure. She thought the board could agree that was the  
37 case.

38 Jan G. said this grabs at her heartstrings. Everybody has made mistakes in their life and  
39 she knows she has. The problem is in this case the proportionality of the hurt or the harm  
40 to Mr. McLennand is so out of whack with his mistake for not measuring. If this were a  
41 \$500 doghouse with a \$2,000 fence, she probably would feel differently. Yeah, he should  
42 have measured it. But, given the magnitude of his loss and other arguments about is it  
43 really like other properties. She just doesn't buy that. So to her, if the board did grant this  
44 rehearing and something were to happen in the end and Mr. McLennand didn't get it. It's  
45 kind of like handing out a 30-year sentence for jaywalking. The Zoning Board of  
46 Adjustment exists in the gray area between what's black and what's white. She hopes that  
47 the board has charity in their heart to see when something is really going to be a  
48 disproportionate negative outcome. So, in her opinion, no, she doesn't think we should  
49 grant the rehearing.

50 The Chair asked Jan G. if she was speaking about substantial justice. Jan G. said she  
51 was speaking about substantial justice and proportional justice. She said the fact that the  
52 abutters' major complaint can't be blamed on a mistake that equivalent to the size of a  
53 small bathroom.

54 Derek said picking up on what Jan said, he read the petition and there's not a lot of new  
55 stuff in there. The board has been dealing with this for quite a while now. One of the new  
56 things that he saw was the laser measurement that the encroachment might be more than  
57 7 feet. He said that depends on what angle was used. He uses laser measurements all  
58 the time to hang cabinets and you can change that dimension on any angle that you want.  
59 He doesn't think that's justified in saying that is new information. He doesn't see a lot of  
60 new information or new evidence that has come to light that the board hasn't already talked  
61 over, in his opinion. He is in agreement with Jan G., he doesn't see it as grounds to rehash  
62 the same information and doesn't see anything new in order to grant a rehearing.

63 The Chair said the only information that seemed to be different than what was brought up  
64 at the hearing was they are saying the fill put in to create the area where the new garage  
65 was brought in by the owner.

66 Derek said he gets that. But you really can't build a building on no ground. The fill was put  
67 there obviously to sustain the building. He feels the substantial justice thing is relevant.

## UNAPPROVED – Minutes of May 22, 2024

68 Beverley said if that was a big deal, then that should have been brought up the first time  
69 the applicant was here, not now. Not after the board has had about three meetings. She  
70 also agreed with what Jan G. said.

71 The Chair said there was a point that the petitioner's calculation showed the encroachment  
72 is likely greater than the 7 feet. That's a whole different appeal of the Selectboard, because  
73 the variance was granted for seven feet. If the overhang of the roof is greater than 7 feet  
74 from the property line, then they're not within the variance that was granted. That is a  
75 whole different issue.

76 Lucinda said she had been bothered from the beginning with this case because she didn't  
77 think it met the hardship because it was a self-imposed by the property owner. Because  
78 they should have been able to measure and if there was any doubt, they shouldn't have  
79 made the building as large.

80 The Chair said, right which goes back to the Waiver for Dimensional Requirements. Which  
81 as the board knows was denied and that was upheld in the court. The variance is a  
82 different animal and its different criteria. So, their point that it shouldn't be granted because  
83 it didn't meet the lower court's requirement really doesn't hold because this is a different  
84 application with different requirements and conditions to be viewed on its own merits.

85 Sam referenced Lucinda's comments about hardship. He thinks in part the hardship was  
86 made more by continuing to build. He was not sure what effect that really had on the  
87 overall cost incurred. Because a substantial amount of it was in the foundation, the framing  
88 and the sheathing and the finishes that were put in that may have cost more. But it's not  
89 the cost of fixing it. He thinks that adding that cost on to the hardship makes it more likely  
90 to gain the variance and sympathy of the board for the cost of that hardship. But because  
91 it's something that's comes after the fact, it shouldn't be part of the determination.

92 Sam said but on the other hand, the (NH Municipal) training from a couple of weeks ago  
93 illustrated the balance between the policing action and the property rights. He thought that  
94 goes back to what Jan G. had said about substantial justice. The harm for the oversight  
95 and the need to get the variance after the fact, he thinks the penalty would be much greater  
96 than the mistake would warrant. He thought the overall effect is the building would still be  
97 there even if it was within compliance, it would still be there. It would still be visible.

98 Derek said Sam's is correct. If you took a laser and cut that corner off that barn it is still  
99 going to be there, legally, because they have the right to put a barn on their property.

100 James said this is an appeal the board is discussing. The whole purpose for an appeal is  
101 for new evidence. He said the board is discussing old things right now that have already  
102 been decided. The point of the appeal is for new evidence that wasn't available the first  
103 time it was presented.

104 Sam said it could also be the board may have made a mistake in the facts, not just that  
105 there's new facts to add to it, but whether the board had misinterpreted something.

106 James said the only thing he noticed in terms of new evidence is on item E #69, "If a  
107 rehearing is granted, the Board could consider additional evidence from the Petitioner that  
108 water trespass and erosion are concerns given the buildup of the foundation that has  
109 changed over the years, and upon information and belief, given that both the Applicant  
110 and Petitioner's parcels natural drainage flows into Frazier Brook and the Warner River."

111 The Chair said that is supposition, and she is not sure of what kind of proof they have  
112 because they didn't show any proof in this document about the fill. So those two things



113 seem to be the crux of this and the fact that the runoff was never brought up and this is  
114 the third hearing on this property. The runoff into Fraser Brook was never brought up.

115 James said that is why he is bringing this up. Because, when referencing Google Earth,  
116 and looking at the building and where Fraser Brook is, it's approximately 200 feet to 350  
117 feet. He said he knows quite well about riparian buffers. Usually there is something  
118 between 50 feet and maybe 100 feet to a waterway and wetland. Here there is an excess  
119 of 250 feet so they are not even close. So there is a very good and healthy riparian buffer  
120 that would collect any potential drainage from the property.

121 Sam said he is not an expert in topography. He would believe what James said lines up  
122 with what Sam saw on the site. Sam didn't believe the topography had changed that much  
123 to affect the erosion and drainage to the Fraser Brook or to the petitioner's property  
124 because of the stone wall and the property line. Sam said from his experience he would  
125 say the claim is not necessarily valid.

126 James said from a background standpoint he is certified in the state of Maryland for water  
127 management and nutrient runoff for the Chesapeake Bay. He did a lot of work with various  
128 businesses and took a six-month class on understanding this sort of concept.

129 The Chair said it is nice to have James' expertise. She said another point that they brought  
130 up was the application checklist that this didn't come as a referral. The Chair said the  
131 checklist is just our checklist and has no legal standing.

132 The Chair asked the board if there were any other points that were made that the board  
133 thinks need to be consider. She sensed that at least a majority of the board has not seen  
134 a reason for rehearing. She said those board members who voted against this at the  
135 various hearings still probably feel the same way about whether or not they met the criteria  
136 for the variance. But that is not what the board is hearing tonight. It's just whether or not  
137 the board feels that the abutter has given enough reason to re-open this case for a  
138 rehearing.

139 The Chair asked if anyone had any other points to bring up or discuss?

140 Beverley and Jan G. said they thought everyone had said what they needed a couple of  
141 times. There were no further comments made by the board.

142 The Chair said she just wanted to be sure. She added that the drawing Harry was making  
143 on the dry erase board reference in number 36 in the petition, was in no way attesting to  
144 the distance, and was more about how measurements are made.

145 **Jan Gugliotti made a motion to deny the rehearing request related to the April 10,**  
146 **2024 decision of the ZBA case 2024-03 James McClelland, 225 Couchtown Road,**  
147 **Map 15 Lot 53-3. Beverley Howe seconded the motion. Discussion:** The Chair said  
148 basically the board was saying there was nothing in the request for rehearing that we felt  
149 was new. Beverley said nothing in the petition warrants going over the case again. Derek  
150 said this is treated as a separate case from what we did before, this is only on the merits  
151 of this petition. The Chair said the board should have a reason beyond that everybody  
152 feels there is nothing new to compel them to want to rehear the case. Janice asked if they  
153 wanted to do the motion first then come up with facts and findings. The Chair said the  
154 criteria could be general. The Chair introduced the motion for a vote. **Roll Call Vote:**  
155 Beverley Howe – Yes. Jan Gugliotti – Yes. Lucinda McQueen – Yes. Derek Narducci –  
156 Yes. Barbara Marty – Yes. The vote was unanimously passed to deny the request for a  
157 rehearing.

158 Janice asked if there were any further reasons to add to the decision.

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159 The Chair said there was no new evidence and nothing compelling in the request for the  
160 rehearing. The point about the runoff into the Frasier Brook is not relevant. Even though  
161 it's possibly new information.

162 Harry said the board also needs to state whether or not they made a mistake in the facts  
163 of the law. He does not think the board made a mistake in the original decision.

164 The board determined the information in points 68 and 69 in their petition was new  
165 information but, not compelling and probably not even relevant to the property.

166 The board discussed that the build-up of material prior to building the garage was new  
167 information but not compelling enough to justify a new hearing.

168 Harry said the Notice of Decision on the variance was very accurate.

169 **Jan Gugliotti made a motion to adjourn the meeting. Lucinda McQueen seconded**  
170 **the motion.** The meeting was adjourned at 7:30 PM.

/jll