



**TOWN OF WARNER**

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**Zoning Board of Adjustment**  
**Minutes of August 9, 2023**

**I. The Chair opened the ZBA meeting at 6:58 PM.**

**A. ROLL CALL**

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

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

**II. UNFINISHED BUSINESS**

**A. Application for an Equitable Waiver of Dimensional Requirements**

**Case:** 2023-01a  
**Applicant:** James McLennand  
**Agent:** Derek D. Lick, Attorney, Orr and Reno  
**Address:** 225 Couchtown Road  
**Map/Lot:** Map 15, Lot 053-3  
**District:** R-3

**Details of Request:** Request a rehearing for an Equitable Waiver to the terms of Article VII.C.b. Case: 2023-01 was denied by the Zoning Board of Adjustment on April 12, 2023.

Board Meeting Deliberations. **No public testimony.** Restate motion for the McLennand decision, vote until a motion passes.

The Chair explained the board did vote on the McLennand Equitable Waiver application at the July 12 ZBA meeting. The vote was to approve the Equitable Waiver which failed, 3 to 2. Although a failed vote does not represent a decision made by the board.

**The Chair, Barbara Marty, made a motion to deny the Equitable Waiver of Dimensional Requirements requested in application 2023-01a for the property on Map 15, Lot 53-3, in the R-3 zone located at 225 Couchtown Road. Jan Gugliotti**

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**seconded the motion. Discussion:** None. The Chair elevated Derek Narducci to voting member status to fill an absence. **Roll Call Vote:** Derek Narducci – No, Beverley Howe – No, Jan Gugliotti – Yes, Lucinda McQueen – Yes, Barbara Marty – Yes. Summary: The board denied the Equitable Waiver by a 3 to 2 vote.

### **Findings of Fact:**

Upon rehearing case 2023-01a the board found that the violation was an outcome of a failure to inquire. It was a failure to measure the distance from the roof of the garage to the property line before beginning construction. Reference RSA 674:33-A section 1 criteria B.

**Jan Gugliotti moved that the board accept the Findings of Fact. Lucinda McQueen seconded the motion. Discussion:** None. **Roll Call Vote:** Derek Narducc - Yes, Beverley Howe – Yes, Jan Gugliotti – Yes, Lucinda McQueen – Yes, Barbara Marty – Yes. Summary: The board approved the Findings of Fact by a 5 to 0 vote.

### **III. REVIEW OF MINUTES OF PREVIOUS MEETING:** July 12, 2023

The Chair moved the approve/edit process of the minutes to the next item on the agenda.

**Jan Gugliotti made a motion to approve the minutes as amended. Derek Narducci seconded the minutes. Discussion:** None. **Voice Vote Tally:** 5 to 0.

Janice asked if the minutes are too detailed. The Chair said there are instances where the minutes quote an attorney, and it is a good thing to have that detail. The Chair said tonight where they are discussing housekeeping issues the minutes could be more condensed. Jan G. and Lucinda agreed. Janice explained when she looks at past minutes of the board for historical research they are sometimes lacking in detail. Derek said when they are making a decision it is very important that it be as accurate as possible. The Chair said if someone wants a record of how a decision was made for the purposes of a court hearing it is important to have something that is fairly detailed.

### **II. Continuation of UNFINISHED BUSINESS (out of order)**

#### **B. Discuss Rules of Procedure (ROP) additions suggested by the town's Attorney.**

The Chair discussed the attorney's recommendations for inclusion in the board's Rules of Procedure. The first item discussed was that only one Planning Board member can serve on the Zoning Board. Jan G. asked about a Select Board member being an ex-officio member of the ZBA. The Chair said the Zoning Board is not required to have an ex-officio member of the Select Board. The Chair clarified that if a member of any other board is on the ZBA they serve as a citizen of Warner and not in an official capacity. Jan G. asked if a person could be a Select Board member and a Planning Board and Zoning Board member. Janice said legally, yes. Beverley asked if a Select Board member is on the Planning Board do they get to vote. The Chair said, yes. Janice said they cannot hold office on two boards. If someone is a Chair of the Select Board they cannot be a Chair or Vice Chair of the Zoning Board. Beverley asked if Harry will still serve on the ZBA. The Chair confirmed that he will serve. Janice said he would have to be mindful of conflict and can only have one vote on a specific case on only one board.

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The Chair suggested adding a section to the ROP on the motion to reconsider. The procedures don't address how the board handles rehearings. Most of her suggested text refers to RSA 677:2. The board discussed the motion for rehearing wording. Purposed wording was "the motion for rehearing shall specify fully every ground upon which it is claimed that the decision is unlawful or unreasonable." The Chair said Harry wanted to change it to read "the motion for rehearing shall specify fully the grounds for rehearing." Derek liked Harry's change because removing the term "unlawful" is too confining. Sam said the wording in the RSA should be followed, although, grounds for rehearing offers room for someone's opinion. The Chair said the term "unreasonable" leaves room for an opinion. The Chair thought it should be a higher bar to reach to get a rehearing. Jan G. said it should be factual with evidence to back it up. Janice said the board can rehear a case based on an error in their own judgment, or the ordinance was misinterpreted, or to hear new evidence.

Beverley said they are the Zoning Board of Adjustment, that means adjustment to the rules. Janice said the board can create relief when the ordinances are unreasonable when applied too literally. Jan G. said the board has agreed to instances where it was unreasonable or unlawful to apply the law.

The Chair said in a previous case for an equitable waiver the RSA said the applicant had to meet all the criteria, it does not include the board member's opinion. They are taking evidence and they are ruling whether or not the criteria have been met. The Chair said there is less room for interpretation, unlike a special exception or a variance when considering a criteria like 'is there a change in the character of the neighborhood'. The look of the neighborhood and other variables can be observed.

Sam said in the previous case they measured from the stone wall and not the property line, which in his opinion would have been a mistake. Sam said that is a good example of a grey area.

Janice said it also comes down to how you interpret the word "character" which means something different to every single person on the board. Also, the words "mistake" or "ignorance" of the law may mean something different to each member of the board and that is why we have a diverse board.

The Chair brought the conversation back to the proposed change to the ROP. The Chair asked for a quick vote on Harry's proposed changes to the wording. Sam asked if addressing "new information" should be added to the wording. The Chair felt that could fit under the term unreasonable. Jan G. questioned the statement about the minutes being made available within five business days. The Chair read RSA 677:3. Jan G. said the action they (the appellant) can take if the minutes are not available within five business days, is unspecified.

The Chair asked members if more time was needed for board members to consider the proposed changes. The board agreed. The Chair will also send to Janice the changes proposed by Harry.

### **C. Consider application additions and checklist changes.**

The Chair opened the conversation on changes to the applications and the document she proposed on "How to Draw a Plot Plan." They discussed having drawings to scale. Janice suggested asking for the scale to be identified on the plot plan or the board could

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identify what the scale should be for an 8.5 by 11 piece of paper. Lucinda said a larger sized paper would be easier. The Chair said if they draw it on a larger paper, and shrink it to 8.5 by 11, it won't shrink to scale and as long as they have all their measurements we could extrapolate how big the lot is.

The Chair brought the sample drawings to the board's attention. Janice said in her experience of working with the public she suggested keeping the "How to Draw a Plot Plan" as simple as possible. As much accurate information should be on the sample drawing, then you don't have to say hardly anything in the instructions. This may be especially good for applicants who need a visual. The Chair thought the two documents could work together well.

The board discussed edits to the "How to Draw a Plot Plan" and the Chair took notes on the changes. Derek suggested members think about what kind of application or what conditions would trigger the need for a professionally surveyed/engineered plot plan, instead of a drawn plot plan. The Chair said it may be necessary when a property owner doesn't know where their property line is. Derek said if they are using the tax maps, they may not necessarily be accurate. He said how do we base a decision on something we are not sure of? He said maybe the board needs to determine the need for professional drawings on a case-by-case basis. Derek suggested the board table the discussion on the document. He encouraged members to think about it and come back with suggestions about what the trigger would be for a professional plot plan.

The Chair suggested they look at the applicant's checklist. She had made changes to the document and added an item prompting the applicant to supply copies of the application for board members. Which would ease that burden on the Land Use office. Derek thought it was a good idea. The board reviewed the checklist and suggested edits, the Chair made note of the changes.

The board reviewed some of the individual applications. Janice said she has worked to get all the applications uniform. They are not complete. She would prefer not to have to change the format of the applications, although changes to content is fine. The documents are set up in tables (in Word) so they are ready to be converted to fillable forms in Adobe PDF. The Chair suggested that Janice bring the forms that are ready to be converted to the next meeting.

**NOTE:** The audio stopped at this point in the meeting.

#### **IV. COMMUNICATIONS AND MISCELLANEOUS**

#### **V. ADJOURNMENT (Motion, Second, Vote)**

The meeting was adjourned at 9:20 PM.

/jll