



## 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, April 10, 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: 2024-03  
Applicant: James McLennand  
Agent: Derek D. Lick, Attorney, Orr & Reno  
Address: 225 Couchtown Road  
Map/Lot: Map 15, Lot 053-3  
District: R-3

**Details of Request:** Requesting a Variance from Article VII,C,1,b, to allow the setback encroachment into the 40-foot setback.

### B. UNFINISHED BUSINESS

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

### C. REVIEW OF MINUTES OF PREVIOUS MEETING – January 10, 2024, February 14, 2024

### D. COMMUNICATIONS AND MISCELLANEOUS

Training in May NH Office of Planning and Development (OPD) Spring 2024 Planning & Zoning Conference. Saturday, May 11, 2024 8:30 AM - 4:00 PM – online only

### E. 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. <b>Court Referral</b>	X	
✓		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)	X	
✓		<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	
✓		<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	
N/A		<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>		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)	X	



# TOWN OF WARNER

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

Zoning Board of Adjustment

## 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 <u>  6  </u> x	\$8.00
Commercial	\$100.00	Applicant Notification	\$60.00

\* 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: James McLennand			Date: 03/22/2024
Applicant Mailing Address: 225 Couchtown Road			
	Town: Warner	State: NH	Zip: 03278
Telephone	Primary: 603-848-1706	Alternate:	
Owner of Property Information			
Name of Owner: Same as above			Date:
Owner Mailing Address:			
	Town:	State:	Zip:
Telephone	Primary:	Alternate:	
Location and Description of Property			
Map #: 15	Lot #: 053-3	Zoning District: R3	
Address:			
<b>Will a Site Plan Review approval be required by the Planning Board?</b>			Yes                      No X
Proposed Use:			
Mr. McLennand obtained a building permit in 2022 to construct a mudroom and attached garage on his Property. He now seeks a variance because, upon further investigation, the town building inspector determined that the garage encroached upon a setback.			
<b>Details of Request:</b> <i>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 _____)</i>			

Mr. McLennand requests a variance from Article VII, C, 1b to allow the setback encroachment. Please see attached narrative for additional information.



ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

The undersigned hereby requests a VARIANCE to the terms of:

Article: VIII , Section: C, 1b 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:**

Please see attached narrative.

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

Please see attached narrative.

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

Please see attached narrative.

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

Please see attached narrative.

**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;

Please see attached narrative.

**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]*

Please see attached narrative.

**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 Derek D. Lick 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): James McLennand  
Derek D. Lick (as counsel)

Date: 3/22/2024

Date: 3/22/24

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

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

\_\_\_\_\_

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

Printed name of person(s) who signed above:

James McLennand  
 \_\_\_\_\_  
 \_\_\_\_\_

**For Zoning Board of Adjustment Use Only**

**Assigned Case #:**

Date Received at Land Use Office:

Received by:

Fees Submitted:

Amount:                      Cash:                      Check #:                      Other:

Abutters' List Received:                      Yes                      No

Date of Review:

Date of Hearing:

Date Approved:



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

ALL COSTS OF MAILING BY CERTIFIED MAIL, FEES, AND LEGAL ADVERTISEMENT IN A NEWSPAPER MUST BE PAID BY APPLICANT BEFORE THE HEARING MAY BEGIN.

## Town of Warner Zoning Board of Adjustment Abutter(s) List

Please list all abutters **within 200 feet** of the boundaries of the property.  
Applicant must reference and follow stipulations in the Abutter(s) List Instructions on page 3, item numbers 10.a. through 10.d. of the Application Instructions.

Map 15	Name: Robert & Cheryl Gibbons
Lot 53-2	Address: 247 Couchtown Rd. Warner, NH 03278
Map 15	Name: Neil & Linda Dyment
Lot 56-1	Address: 207 Couchtown Rd. Warner, NH 03278
Map 15	Name: Richard Morgan
Lot 55	Address: 214 Couchtown Rd. Warner, NH 03278
Map 15	Name: Nathan Brown
Lot 53-1	Address: 164 Mason Hill Rd. Warner, NH 03278
Map 15	Name: Tom Pendergast
Lot 54	Address: 517 Prescott St. Herkimer, NY 13350
Map	Name: Town of Warner Select Board
Lot	Address: 5 East Main Street, PO Box 265, Warner, NH 03278
Map Lot	Name:
	Address:
Map	Name:
Lot	Address:
Map Lot	Name:
	Address:
Map	Name:
Lot	Address:
Map Lot	Name:
	Address:

# Town of Warner Zoning Board of Adjustment Abutter(s) List

(Continued)

Map	Name:
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## Narrative in Support of Variance Application

This variance application is related to the property located at 225 Couchtown Road (Map 15, Lot 053-3), owned by James McLennand (the “Property”).

### *Background Information*

In 2022, Mr. McLennand obtained a building permit to construct a mudroom and attached garage on his Property. After the foundation was poured, the Town Building Inspector visited the Property to inspect the foundation and did not identify any issues with respect to setbacks. Construction commenced and the garage and mudroom were nearly complete when a neighbor complained. The complaining neighbor alleged that the garage impacted the view from her abutting property. The Town sent the Building Inspector to the property again, and this time he concluded that the rear corner of the garage encroached on the 40-foot setback, a violation of Article VII, C, 1b of the Town of Warner Zoning Ordinance. The Town sent a cease-and-desist letter to Mr. McLennand and instructed him to apply for an equitable waiver. (See attached January 27, 2023 letter from Judith Newman-Rogers on behalf of the Select Board and the March 14, 2023 letter from Janice Loz, Land Use Administrator.)

Mr. McLennand applied to this Board for an equitable waiver for the encroachment into the setback. During this Board’s April 12, 2023 meeting, his request was denied. This Board concluded that Mr. McLennand’s violation “was an outcome of ignorance of the law and failure to inquire.”

Mr. McLennand requested a rehearing and submitted a revised equitable waiver request. Mr. McLennand explained that he and his contractor were aware of the setback requirements, and that they believed the garage was being constructed in such a way to meet those requirements. Specifically, they believed the garage to be outside the setback because it was attached to Mr. McLennand’s conforming home and constructed roughly in line with the back wall of the house. Mr. McLennand and his contractor did not appreciate that the angle of the boundary line in relation to the garage was such that the boundary line got closer to the garage at the corner farthest from the house. This good faith error resulted in the accidental encroachment.

A rehearing was held on July 12, 2023, where Mr. McLennand’s request was denied again. Mr. McLennand appealed to Merrimack County Superior Court. The Court affirmed the decision of the Board, and the Superior Court’s order is on appeal to the New Hampshire Supreme Court.

During an appearance in Superior Court, Warner’s counsel suggested that Mr. McLennand had another avenue for relief – a variance – and he welcomed Mr. McLennand to file a variance request. In an effort to resolve this matter, Mr. McLennand now requests a variance from Article VII, C, 1b to allow the garage and mudroom to remain in place.

### *Nature of the Variance Requested*

Mr. McLennand had the garage location measured in relation to the property line, and identified 56 square feet of one corner that, at the point of greatest encroachment, is seven feet

into the 40-foot buffer area, equating to 17.5% of the buffer – allowing 82.5% of the buffer to remain. (See the attached plans.) A variance is appropriate under these circumstances.

### *Application of the Variance Criteria*

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

The New Hampshire Supreme Court has noted that the first and second criteria – the requirement that the variance not be contrary to the public interest and that the variance be consistent with the spirit of the ordinance – are related and intertwined. See *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 514 (2011) (quoting *Farrar v. City of Keene*, 158 N.H. 684, 691(2009)). The first step in analyzing and applying these two criteria is to examine the applicable ordinance. *Id.* (citing *Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 581(2005)). Any variance would in some measure be contrary to the public interest expressed in the zoning ordinance, and, therefore, when considering a variance request, one must determine whether to grant the variance would “unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives.” *Id.* “Thus, for a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, its grant must violate the ordinance's ‘basic zoning objectives.’” *Id.* “Mere conflict with the terms of the ordinance is insufficient.” *Id.*

The New Hampshire Supreme Court has recognized two methods for ascertaining whether granting a variance would violate an ordinance's “basic zoning objectives.” *Id.* One way is to examine whether granting the variance would “alter the essential character of the neighborhood.” *Id.* Another approach “is to examine whether granting the variance would threaten the public health, safety or welfare.” *Id.*

In this instance, the variance relates to a minor encroachment into the Property setback. Such a variance will not alter the essential character of this rural part of town. Because of the large nature of the lots and the dense woods in the area, it is impossible to even notice the encroachment unless one specifically measures it. This is borne out by the fact that the Warner building inspector did not notice the encroachment when inspecting the foundation.

Also, the difference between the corner of the garage being 33 feet from the neighboring property instead of 40 feet will have no impact on the public and certainly will not be adverse to the public interest. In fact, the 33-foot setback that remains at the Property is larger than that required in some other residential districts in Warner. Here, a 33-foot setback is reasonable in meeting the public's need to allow for sufficient distance between houses and other structures abutting parcels, particularly where the abutting property is already developed as a residential lot, and the neighbor's house is approximately 175 feet away from the garage at issue. (See attached Google Maps aerial photos with measurements.)

Nor will granting this variance threaten public health, safety, or welfare. This is a minor encroachment and the property is well screened with 150 to 17 feet of dense woods. There is nothing to suggest that that the public health, safety, and welfare will be impacted at all.



2. The spirit of the ordinance is observed

As noted above, the New Hampshire Supreme Court has determined that the requirement that a variance not be contrary to the public interest “is co-extensive and related to the requirement that a variance be consistent with the spirit of the ordinance.” *Chester Rod & Gun Club v. Town of Chester*, 152 NH 577, 580 (2005); *see also Harborside Associates*, 162 N.H. at 514. As such, this criterion overlaps with the public interest requirement and for the reasons set forth above, the variance would not run contrary to the spirit of the ordinance as found in its basis zoning objective.

The 33-foot remaining setback is more than reasonable given the large lots at issue and the significant natural vegetative screening found in the surrounding woods.

3. Substantial justice is done

The New Hampshire Supreme Court has stated that the “guiding rule” for this criteria is whether the gain to the general public as a result of the ordinance provision outweighs the burden placed on the individual property owner. *Harborside*, 162 N.H. at 515 (quoting *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 109, (2007)). The Court also noted that for this provision one should look “at whether the proposed development [is] consistent with the area’s present use.” *Id.*

Allowing this variance would cause no harm to the general public. The general public will not be negatively impacted by this minor encroachment. The 33-foot remaining setback is larger than that required in some other residential neighborhood districts and is more than sufficient to meet the public’s need to provide for sufficient distance between homes and other structures on abutting parcels.

On the other hand, the benefit of the variance to Mr. McLennand is substantial. Mr. McLennand invested significant funds to build the garage (approximately \$100,000) and will be forced to incur additional costs to demolish the garage or remodel it if this variance is not granted. Without this variance, Mr. McLennand’s investment will be lost. Mr. McLennand’s significant expense far outweighs any public benefit to be gained by enforcing the zoning ordinance and gaining seven more feet of separation between the garage and the property line. Additionally, and importantly, without the variance Mr. McLennand will not be able to construct an attached garage in the best and safest location on the property. As discussed in greater detail below, the unique topography of the lot creates a severe challenge to placement of the garage in a way that avoids a steep slope and allows it to be placed on the knoll next to his home.

Granting this variance will not harm the public but denying it will cause significant harm to Mr. McLennand. Substantial justice favors granting this variance.

4. The values of the surrounding properties will not be diminished

Granting this variance will not diminish surrounding property values. As noted above, the surrounding properties are very well screened from the Property and the encroachment is minor.

Despite the encroachment, 82.5% of the buffer zone still remains. There is no evidence to suggest that the corner of the garage being 33 feet, rather than 40 feet from the abutter's property line diminishes the value of surrounding properties.

Mr. McLennand is aware that one of his abutters alleges to be harmed by the encroachment because the new garage impedes her view. However, the view impact is due to the garage being constructed generally, not because of any encroachment into the setback buffer. Put more specifically, even if the encroaching garage corner were removed, the abutter would have substantially the same view of the garage in all material respects. Given the limited nature of the encroachment and the significant natural screening between the properties (in the control of the abutter), granting this variance would not diminish the abutter's property value. Again, there is nothing to suggest that the corner of the garage being 33 feet, instead of 40 feet from the abutter's property has any impact on the view or the abutter's property value. This is particularly true where there is a large, wooded buffer area on the abutter's own side of the property line between the garage and abutter's home, which is about 175 feet from the rear corner of the garage.

Additionally, the encroachment in no way impacts the abutter's rights to develop her property or otherwise construct improvements. Nor does it impact the rights of other surrounding property owners.

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

RSA 674:33, I(b)(5)(A) defines unnecessary hardship as follows:

... “[U]nnecessary hardship” means 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 to the property; and
- (ii) The proposed use is a reasonable one.

In this instance, the unique nature of the Property, particularly the topography in relation to the already-existing home and the property line at issue, means that strict application of the 40-foot setback requirement is not necessary to meet the general purpose of the ordinance.

The primary purpose of the setback requirement is to ensure that neighbors are unable to construct improvements in a way that interferes with the use of the neighboring lots and to provide some “breathing room” between adjacent structures and uses. Here, as the Board is aware from its prior site visit, the home (and the garage) is located on a knoll that has a steep and pronounced drop off in the “back” in the area of the side property line at issue. That “back” edge of the knoll, which is approximately 30 feet from the property line, provides a natural “no build”

zone and buffer, as it is impossible as a practical matter to build on that severe slope between the knoll and the property line. Additionally, there is 150-plus feet of mature forest on the abutter's land between her home and the property line at issue, creating an additional significant natural vegetative buffer. Setbacks are intended to allow for sufficient distance between houses and other structures on abutting parcels. Here, the 33-foot setback between the property line and the far corner of the garage is more than sufficient to accomplish this goal, in fact, as discussed previously, it is more than is required in some other residential districts in Warner.

The unique topography on Mr. McLennan's property is particularly challenging given the location of the home in relation to the steep driveway up to the top of the knoll. The driveway leading to his house is sloped upward and Mr. McLennan's home sits atop the knoll. Just before the driveway reaches the garage, the driveway slightly levels out, allowing for vehicles to safely and feasibly access the garage and possibly park in front of it. Moving the garage forward and away from the side lot line at issue would move it closer to the sloped portion of the driveway, creating difficult and likely unsafe vehicular access to the garage and home. The garage was placed in its current location next to the home on the flat portion of the knoll, rather than near the "front" edge of the knoll near the slope, to both allow for it to properly connect to the existing home and to allow for safe and relative level access by vehicles. Avoiding the sloped area of the access drive as one enters or leaves the garage is particularly important in the winter months when the driveway can be covered with snow and ice. Having as large as possible "flat" area in front of the garage is the safest option for accessing the garage and for safe maneuvering of vehicles that may be parked in front of it (such as guests to the home or delivery vehicles). That maneuvering area would be limited or non-existent if the garage is moved farther "forward" from the property line to create an additional buffer in the "back" greater than the natural one already existing behind the garage because of the steep slope between the knoll and the property line.

Also, placing an attached garage on the Property is reasonable, as such garages are typical in New Hampshire to protect vehicles – including trucks fitted up with snowplows like Mr. McClelland's, in addition to personal vehicles – from the elements, such as rain, snow, and ice. Attached garages must, by definition, be "attached" to the houses they serve, and here the house is located on the "back side" of the knoll to allow for a flat front yard and vehicle pull up area. It is reasonable to place the garage there too and to locate it in a way that best allows for safe vehicle access, while also providing for reasonable movement and maneuverability of cars of visitors and guests who would park in front of the garage to avoid parking on the steeply-sloped driveway.

\* \* \*

For the reasons stated above, the variance should be granted.



# TOWN OF WARNER

PO Box 265 5 E Main St  
Warner, New Hampshire 03278-0265  
Telephone: (603) 456-2298 Fax: (603) 456-2297  
warnernh.gov

Select Board  
Sam Bower, Chair  
Christine Frost  
Lois Shea  
selectboard@warnernh.gov  
Town Administrator Diane Ricciardelli  
administrator@warnernh.gov

## NON-COMPLIANCE NOTICE

Date: January 27, 2023

To: James McLennard  
225 Couchtown Road  
Warner NH 03278

Project: Building Permit 2022-83  
Garage and mud room

Contractor or Subcontractor on record: Lakeside

You are hereby notified that:

|X| inspection indicates the garage may not conform to the zoning specification requirements for the Town of Warner.

The specification violated: Article VII, paragraph C, 1b.

Under the provision of the Town of Warner Zoning Ordinance the setback requirements in the R3 zone from an abutter is 40-feet and is stated in the Zoning Set Back Reference Chart included in the Building Application packet.

It shall be your responsibility to provide clear documentation of compliance; determine the corrective action necessary; discontinue operations until additional investigations confirm or refute the initial findings.

Non-complying work may be required to be removed at your cost.

Your response is required by: Monday, February 6, 2023

Sincerely,

On behalf of the Warner Select Board,  
Samuel Bower, Chair  
Christine Frost  
Lois Shea

Judith A. Newman-Rogers,  
Building Department





## 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.us](mailto:landuse@warnernh.us)

Land Use Administration

March 14, 2023

James McLennand  
225 Couchtown Road  
Warner, NH 03278

Hello James,

This letter is in reference to a non-conforming garage on your property at 225 Couchtown Road, Map 15, Lot 053-3, in the R-3 District in Warner.

The Building Department of Warner determined the newly constructed garage is encroaching on the 40-foot setback requirement from the abutter's property line. A variance from the Zoning Board of Adjustment was not obtained prior to construction. Therefore, as a condition of your cease-and-desist letter from the Select Board you must file an appeal/application with the ZBA.

I spoke with your contractor, David, from Lake Side Builders. I gave him the necessary forms to forward to you and have not received an application.

Since the building has already been built the proper application to submit to the ZBA is an **Equitable Waiver of Dimensional Requirements**. I have attached this form, please complete and return it to the Land Use office by the **March 28<sup>th</sup> deadline**. The next ZBA meeting is April 12<sup>th</sup> at 7:00 PM in the Lower Town Meeting Room, you cannot appear before them without a completed application.

Instructions are included in the application. If you have questions or need help filling out the application, please call and make an appointment and I can step you through the process.

Thank you and I look forward to receiving your application.

Janice L. Loz

Land Use Administration  
[landuse@warnernh.gov](mailto:landuse@warnernh.gov)  
603.456.2298 X: 7

Copy: [jamesmclennand@hotmail.com](mailto:jamesmclennand@hotmail.com) (on March 13, 2023)  
Town Administrator  
Select Board

**Attachment:** Equitable Waiver of Dimensional Requirements Application

After Recording Return To:  
James McLennand  
25 Couchtown Rd.  
Warner, NH  
03278  
08-CN-01745

MCRD Book 3094 Page 1359



[Space Above This Line For Recording Data]

1842  
2-30  
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FIDUCIARY DEED

2678.00

KNOW ALL MEN BY THESE PRESENTS, that I, Christopher S. Hart, Executor, of the Estate of Stephen H. Hart, with a mailing address of 404 East Meadow Lane, Pembroke, NH 03275 by powers conferred by the Merrimack County Probate Court, for consideration paid, grants to James McLennand, single, with a mailing address of 24 Sansone Lane, Warner, NH 03278:

A certain tract or parcel of land, with any buildings or improvements thereon, situated in the town of Warner, the County of Merrimack, and State of New Hampshire, and shown as Lot 3 on a plan entitled, "Subdivision and Annexation Plan, Property of Fran Brown", dated April 1984, prepared by Jeffrey A. Evans, Land Consultant, South Sutton, New Hampshire 03273 and recorded in the Merrimack County Registry of Deeds as Plan #7923, to which Plan reference is made for a more particular description.

Containing five (5.0) acres, more or less, according to said Plan.

Subject to any and all matters, including setbacks if any, as shown on Plan No. 7923 recorded in the Merrimack County Registry of Deeds.

Subject to riparian rights as to the brook as may apply.

Subject to the restriction that there shall be no mobile homes placed on or allowed to remain on the foregoing premises.



CH  
Initials

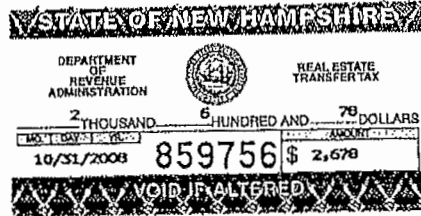
Meaning and intending to describe the same premises conveyed to Stephen H. Hart by deed dated April 5, 1996 and recorded in the Merrimack County Registry of Deeds at Book 2017, Page 1645. Stephen H. Hart died on July 12, 2008. See Merrimack County Probate Court Docket Number 2008-673. Christopher S. Hart was appointed Executor of the Estate of Stephen H. Hart as on file with the Merrimack County Probate Court.

Executed this 30 day of October, 2008.

Estate of Stephen H. Hart



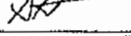
By: Christopher S. Hart, Executor



STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

October 30, 2008

Personally appeared the above-named **Christopher S. Hart, Executor** on behalf of **Estate of Stephen H. Hart** known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained in his aforesaid capacity.

Before me,   
Notary Public/Justice of the Peace

My Commission expires: 11/10/08

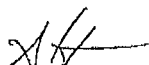


\_\_\_\_\_  
Initials

**Consent to Sale of Real Estate**

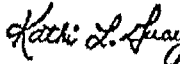
I, Christopher Stephen Hart, heir of the Estate of Stephen H. Hart, hereby consent to the sale of the property at 225 Couchtown Road, Warner, Merrimack County, New Hampshire, to James McLennand for the sum of \$180,000.00.

Dated October 20, 2008.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Christopher Stephen Hart

MERRIMACK COUNTY RECORDS

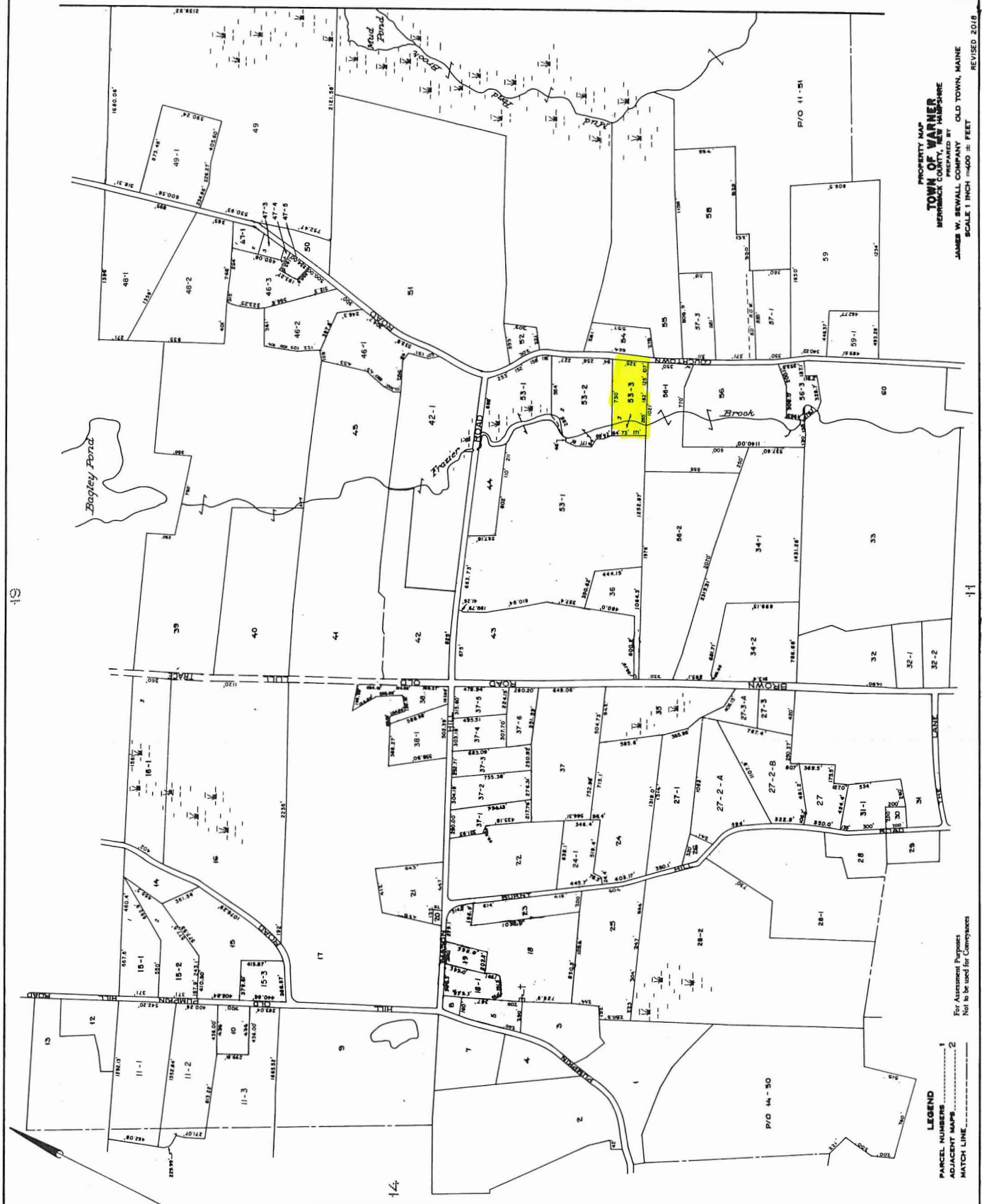
 CPO, Register



W E S T M

PROPERTY MAP  
TOWN OF WARNER  
MERMAK COUNTY, NEW HAMPSHIRE

PREPARED BY  
JAMES W. SEWALL COMPANY OLD TOWN, MAINE  
SCALE 1 INCH = 400 FEET  
REVISED 2018



LEGEND  
 PARCEL NUMBERS ..... 1  
 ADJACENT MAPS ..... 2  
 MATCH LINE .....

For Assessment Purposes  
 Not to be Used for Conveyances





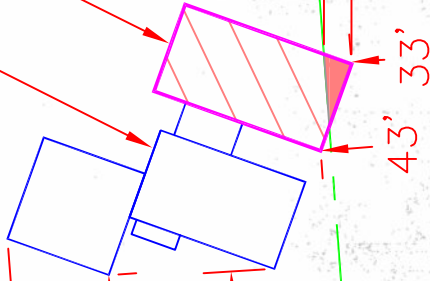
191'

EXISTING 40'L X 24'W HOUSE

NEW 46'L X 24'W GARAGE

# LOT 3 5.0 ACRES

40' SETBACK LINE  
(TYP. SIDES AND REAR)



7.2'

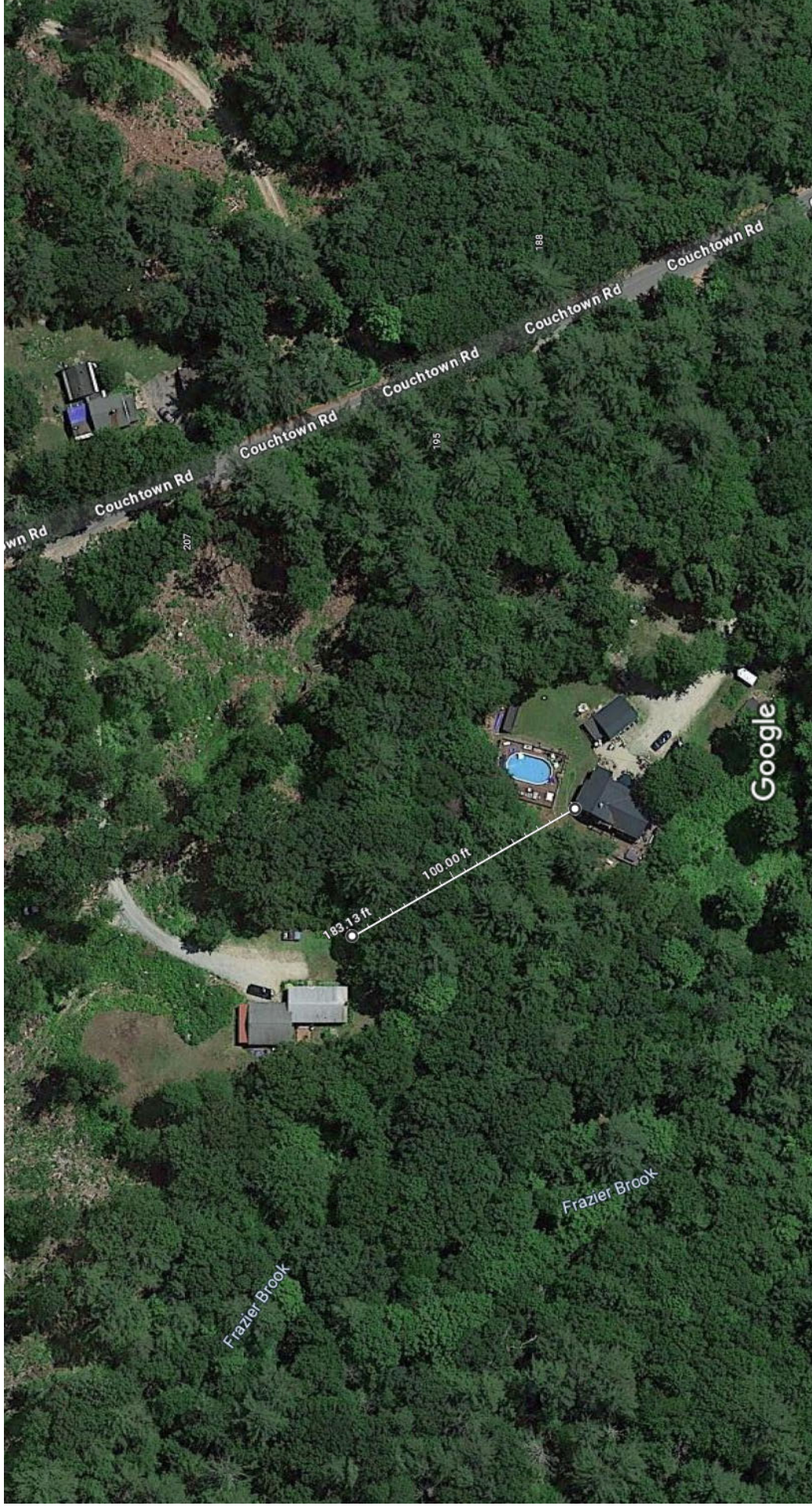
43' 33'

125' ±  
N.83°-00'E.

N.76°-45'E. 182' ±



Google Maps Schoodac Rd



Imagery ©2024 Maxar Technologies, Map data ©2024 50 ft

Measure distance  
Total distance: 183.13 ft (55.82 m)



Google Maps Schoodac Rd



Map data ©2024, Map data ©2024 20 ft

Measure distance  
Total distance: 183.13 ft (55.82 m)



## 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](mailto:landuse@warnernh.gov)

# ABUTTER'S NOTICE OF PUBLIC HEARING *Zoning Board of Adjustment Meeting*

**April 10, 2024**  
Meeting in the Town Hall  
7:00 PM

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 as defined in the application. The hearing will give you the opportunity to look at the proposal, ask questions and make comments. The application will be available the Thursday before the meeting, online at <https://warner.nh.us> on the Planning Board 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, April 10, 2024*, mailed, emailed or delivered to the address above.

### **Application for an Variance**

**Case:** 2024-03  
**Applicant:** James McLennand  
**Agent:** Derek D. Lick, Attorney, Orr & Reno  
**Address:** 225 Couchtown Road  
**Map/Lot:** Map 15, Lot 053-3  
**District:** R-3

**Details of Request:** Requesting a Variance from Article VII,C,1,b, to allow the setback encroachment into the 40-foot setback.

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.



# Applicant's Checklist

Have you included		Item	Land Use Office finds	
Yes	No		Yes	No
		Application must be received 15 days prior to the next ZBA meeting.		
		The applicant has <b>paid fees</b> (see application for specific fees). <b>Check</b> made out to the <b>Town of Warner</b> .		
		Complete and sign the application for the type of appeal requested.		
		All property owners must sign the Owner Authorization form.		
		Referral from the Select Board, the Planning Board or a denial of a Building Permit from the Building Department must be included with a <b>Variance</b> application.		
		Notice of violation or other communications from either the Select Board, the Planning Board or the Building Department that pertains to the property. (If applicable)		
		Current copy of the lot's deed to verify owner and any easements.		
		List of abutters within 200 feet of the boundaries or all residents on shared pond frontage. Accuracy is the applicant's responsibility. The abutters list must be obtained from the Town of Warner's Assessor's records.		
		<b>Plot Plans shall include: (See instructions and examples)</b>		
		<ul style="list-style-type: none"> <li>All drawings shall be scaled proportionally to the size of paper it is presented on. The smallest possible being an 8.5" x 11" piece of paper.</li> </ul>		
		<ul style="list-style-type: none"> <li>Note the dimensions of <u>existing structures</u> and the measured distance between structures.</li> </ul>		
		<ul style="list-style-type: none"> <li>The setback distance from <u>existing structures</u> to all lot lines.</li> </ul>		
		<ul style="list-style-type: none"> <li>Note the dimensions of <b>proposed structures</b> and the measured distance from other structures.</li> </ul>		
		<ul style="list-style-type: none"> <li>The setback distance from the <b>proposed structure</b> (roof overhang) to all lot lines</li> </ul>		
		<ul style="list-style-type: none"> <li>The name and location of all adjacent roads.</li> </ul>		
		<ul style="list-style-type: none"> <li>All bodies of water including ponds, basins, lakes and streams. Noting setbacks.</li> </ul>		



# TOWN OF WARNER

P.O. Box 269  
 Warner, New Hampshire 03278-0059  
 Land Use Office: (603)456-2298 ex. 7  
 Email: landuse@warnernh.gov

Zoning Board of Adjustment

## APPLICATION FOR VARIANCE

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

The undersigned hereby requests a VARIANCE to the terms of:

Article: \_\_\_\_\_, Section: \_\_\_\_\_ of the Warner Zoning Ordinance

Applicant/Contact Person			
Name of Applicant:			Date:
Applicant Mailing Address:			
	Town:	State:	Zip:
Telephone	Primary:	Alternate:	
Owner of Property			
Name of Owner:			Date:
Owner Mailing Address:			
	Town:	State:	Zip:
Telephone	Primary:	Alternate:	
Location of Property			
Map #:	Lot #:	Zoning District:	
Address:			
<b>Will a Site Plan Review approval be required by the Planning Board?</b>		Yes	No
<b>Describe the Request:</b> <i>Include additional information on separate attached pages.</i>			

**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.)

***State in writing how the following five (5) conditions pertain to your property and be prepared to present the application at a public hearing. The burden of proof is on the applicant to show that all conditions have been met.*** In order for the public hearing to proceed there needs to be responses to all five conditions.

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

**2. Granting the variance will not be contrary to the spirit of the ordinance because:**

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

**4. Granting the variance the value of surrounding properties are not diminished because:**

**Answer either - 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. "Unnecessary hardships" means 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.

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

- B. An "unnecessary hardship" will be deemed to exist if, 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.

**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): \_\_\_\_\_

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

\_\_\_\_\_

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

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

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

\_\_\_\_\_

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

Printed name of person(s) who signed above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Fees Worksheet:** All fees must be paid prior to starting the hearing.

Application Fee		Abutter's Certified Notice Fee	
Residential	\$50.00	Abutter Notification	\$9.00/notice
Commercial	\$100.00	Applicant Notification	\$9.00
<b>Newspaper Notification:</b> Standard Posting: \$60.00 (Intertown Record) or Special Posting requested by applicant: \$300 (Concord Monitor)			

✓	Type of Application	Subtotal
	Residential: \$ 50.00	
	Commercial: \$100.00	

Abutter's Certified Notice Fee		Subtotal
Abutter Notification \$9.00 per notice		
_____ X \$9.00		

✓	Newspaper Notification	Subtotal
	Intertown Record \$60.00	
	Concord Monitor \$300.00	

Total of all the above fees		TOTAL
Check made out to the "Town of Warner" for:		

For Zoning Board of Adjustment Use Only		
<b>Assigned Case #:</b>		
Date Received at Land Use Office:		
Received by:		
Fees Submitted:		
Amount:	Cash:	Check #: Other:
Abutters' List Received:	Yes	No
Date of Review:	Date of Hearing:	Date Approved:



# TOWN OF WARNER

P.O. Box 269  
 Warner, New Hampshire 03278-0059  
 Land Use Office: (603)456-2298 ext. 7  
 Email: landuse@warnernh.gov

Zoning Board of Adjustment

## APPLICATION FOR SPECIAL EXCEPTION

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

The undersigned hereby requests a SPECIAL EXCEPTION to the terms of:

Article: \_\_\_\_\_, Section: \_\_\_\_\_ of the Warner Zoning Ordinance

### Applicant/Contact Person

Name of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant Mailing Address: \_\_\_\_\_

Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Primary: \_\_\_\_\_ Alternate: \_\_\_\_\_

### Owner of Property

Name of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Owner Mailing Address: \_\_\_\_\_

Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Primary: \_\_\_\_\_ Alternate: \_\_\_\_\_

### Location of Property

Map #: \_\_\_\_\_ Lot #: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Address: \_\_\_\_\_

<b>Will a Site Plan Review approval be required by the Planning Board?</b>	Yes	No
--	-----	----

**Describe the Request:** *Include additional information on separate attached pages.*

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

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

***State in writing how the following four (4) conditions pertain to your property and be prepared to present the application at a public hearing. The burden of proof is on the applicant to show that all conditions have been met.*** In order for the public hearing to proceed there needs to be responses to all four conditions.

<p><b>A. The use requested is identified in the TABLE 1 Use Regulations table of the Zoning Ordinance as requiring a Special Exception in that respective zoning district, or as otherwise stated in the Zoning Ordinance:</b></p>
<p><b>B. The requested use is essential or desirable to the public convenience or welfare:</b></p>
<p><b>C. The requested use will not impair the integrity or character of the district or adjoining district, nor be detrimental to the health, morals, or welfare:</b></p>
<p><b>D. OC-1 and OR-1 districts only: Use of structure must conform to road access and availability of all services to that parcel at the time the Special Exception is requested:</b></p>



# TOWN OF WARNER

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Land Use Office: (603)456-2298 ex. 7  
Email: landuse@warnernh.gov

Zoning Board of Adjustment

## APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

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

The undersigned hereby requests an EQUITABLE WAIVER of DIMENSIONAL REQUIREMENTS to the terms of:

Article: \_\_\_\_\_, Section: \_\_\_\_\_ of the Warner Zoning Ordinance

Applicant/Contact Person			
Name of Applicant:			Date:
Applicant Mailing Address:			
	Town:	State:	Zip:
Telephone	Primary:	Alternate:	
Owner of Property			
Name of Owner:			Date:
Owner Mailing Address:			
	Town:	State:	Zip:
Telephone	Primary:	Alternate:	
Location of Property			
Map #:	Lot #:	Zoning District:	
Address:			
Describe the Request: <i>Include additional information on separate attached pages.</i>			



**For an Equitable Waiver of Dimensional Requirements to be granted, the following four conditions must be met:**

***State in writing how the following four (4) conditions pertain to your property and be prepared to present the application at a public hearing. The burden of proof is on the applicant to show that all conditions have been met.*** In order for the public hearing to proceed there needs to be responses to all four conditions.

**RSA 674:33-a Section II**

In lieu of the findings required by the board under subparagraph 1(a) and (b), demonstrate to the satisfaction of the board that the violation existed for 10 years or more, and that no enforcement action, including written notice of violation has been commenced against the violation during that time by the municipality or any person directly affected.

**RSA 674:33-a Section I**

- A. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value:
- B. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representation, but was instead caused by either good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by municipal official in the process of issuing a permit over which that official had authority.
- C. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of the other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; *and*
- D. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be granted, that it would be inequitable to require the violation to be corrected.



# TOWN OF WARNER

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 Land Use Office: (603)456-2298 ex. 7  
 Email: landuse@warnernh.gov

Zoning Board of Adjustment

## APPLICATION FOR APPEAL OF AN ADMINISTRATIVE DECISION

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

The undersigned alleges that an error has been made in the interpretation and/or administration of provisions of the Zoning Ordinance as follows:

Article: \_\_\_\_\_, Section: \_\_\_\_\_ of the Warner Zoning Ordinance

### Applicant/Contact Person

Name of Applicant:		Date:	
Applicant Mailing Address:			
	Town:	State:	Zip:
Telephone	Primary:	Alternate:	

### Owner of Property

Name of Owner:		Date:	
Owner Mailing Address:			
	Town:	State:	Zip:
Telephone	Primary:	Alternate:	

### Location of Property

Map #:	Lot #:	Zoning District:
Address:		

**List documents included pertinent to decision being appealed. Include additional information on separate attached pages.**

**Appeal of an Administrative Decision**

*State in writing how the following four (4) conditions pertain to your property and be prepared to present the application at a public hearing. The burden of proof is on the applicant to show that all conditions have been met.*

**RSA 674:33 and RSA 676:5**

Explanation of decision or interpretation of ordinance made by what Administrative Officer or board:

Appellant's requested decision or interpretation:

Applicant's Signature:	Owner's Signature:
Print Name:	Print Name
Date:	Date:



## TOWN OF WARNER ZONING BOARD OF ADJUSTMENT

P.O. Box 265

Warner, New Hampshire 03278-0059

Telephone: (603) 456-2298, ext. 7

Email: [landuse@warner.nh.gov](mailto:landuse@warner.nh.gov)

### **How to Draw a Plot Plan**

A "plot plan" is an accurate drawing or map of your property that shows the size and configuration of your property and precise location of all man-made structures and all bodies of water and water channels (ponds, streams, swales, etc.) This must be drawn to scale.

A plot plan should show what currently exists on your property and what is being proposed. Plot plans are required to accompany most applications. A plot plan is also very helpful to have when you have questions about what you can and cannot do with your property. It will help the ZBA to see the specific and unique conditions of your site.

### **Do I need a professional surveyor?**

Most residential plot plans are not required to be professionally sealed and stamped if you know where your property line is. Note: If you do not know where your property line is, you may have to hire a land surveyor.

### **What Should a Plot Plan Show?**

- Name and address of the property owner.
- The location and dimensions of all manmade structures, including roof overhang.
- The location and name of all adjacent streets
- Any and all bodies of water including ponds, basins, lakes, and streams.
- Any easements that cross the property, or other pertinent legal information.
- The property lines and their dimensions.
- Dimensions showing how far all structures are from adjacent property lines. When measuring from a street line, it is important that you indicate where your dimension is from (i.e., "center of road", "edge of paving", "edge of right of way", etc.)
- Identification and location of exactly what work is being proposed. In reviewing your application or plot plan, there is the possibility that the Landuse Office may ask you for more detailed, specific or additional information. There may be occasions when you will be required to have your plan prepared by a surveyor or professional engineer. It is important to be as accurate and complete as possible. Approved zoning relief based upon incorrect or incomplete information may be revoked.

See Attached Sample Plot Plan

# PLOT PLAN

22 SCHOOL STREET

Map: 23

Lot: 21

Mary & John Smith

Showing new garage addition

Scale: 1/4" = 10'

