

**Zoning Board of Adjustment  
Warner, NH  
Joint Meeting with  
Zoning Board of Adjustment  
Hopkinton, NH  
Meeting Minutes of March 19, 2008**

**Warner Members Present: Martha Mical, Vice Chair, Dennis Barnard, Eric Rodgers, alternate Mike Holt, alternate Janice Loz, and alternate Rick Davies. (Jean Lightfoot recording)**

**Also Present: Don Gartrell, Warner Town Counsel**

**Not present: Chair Martha Thoits, Joanne Hinnendael and alternate Ted Young.**

**Hopkinton Members Present: Janet Krzyzaniak, Chair, Daniel Rinden, Toni Gray, Harold Perkins and Charles Koontz**

Ms. Mical opened the meeting at 7:05 pm. Roll calls were taken. Ms. Mical said that those voting for Warner would be Mr. Barnard, Mr. Holt, Ms. Loz, Mr. Rodgers and herself. All of the Hopkinton members present will be voting.

**1. CASE 01-2008: VARIANCE**

Applicant: Christian Hartshorn, Chalk Pond Investments

Property Location: 285 Pleasant Pond Road, Hopkinton, NH, Map 3-22, R-2 zoning district (Hopkinton lot 206-21).

Proposed Use: One single family lot

#1: Variance to Zoning Article VI. C. 1. A. Request an 84.37' variance to the 200' minimum frontage requirement.

Ms. Mical recognized Mr. Hartshorn and asked him to summarize what his request is for the benefit of the Hopkinton Board Members. Ms. Krzyzaniak said that the Board needed to be informed of exactly what Mr. Hartshorn is requesting. Mr. Hartshorn explained that the access to his lot is in the Town of Hopkinton and he is applying for a variance for the use which is going to occur in the Warner lot. He said that Zone R-2 for Warner requires 200 feet of frontage and 2 acres for a building. He referenced RSA 674:53, Section III and read, "An owner of contiguous land in more than one municipality may treat such contiguous land as a single lot. . ." He said that is his intention to treat the Warner lot and the small lot with the frontage in Hopkinton as a single lot. He said he believes he needs a variance from the Town of Warner because of RSA 674:53, Section III, and he continued to read, ". . . for purposes of this title, notwithstanding the municipal boundary line, provided that: (a) All uses of land, buildings or structures shall comply with the regulations or ordinances of the municipality in which they are located." He said the use will be in Warner, and that will create a single lot of two tracts. He said he is short about 84 feet for the Warner frontage requirement.

Ms. Mical said that she thought he was here for a variance on the road frontage. Mr. Hartshorn said yes, for Warner. Ms. Mical followed up, saying, that he also does not have enough frontage for Hopkinton. Mr. Hartshorn replied that he believed that under RSA 674:53, Section III, he could treat the two tracts as one lot. Ms. Mical said that the RSA further says that the item that you are requesting, which is a variance on road frontage, should be determined by the regulations of the town that it is in. Mr. Hartshorn disagreed, saying that it was based on where the use is. He cited the Churchill Realty Trust v. Dover case where the use was in Rollinsford and the access was in Dover. He said his use will be in Warner and his access is in Hopkinton. Mr. Gartrell said that he

understands that the combined property in Warner comprises approximately 107 acres. Mr. Hartshorn said there are three tracts – two in Warner and one in Hopkinton. Mr. Gartrell asked if he was proposing to build a single family home on the Warner property. Mr. Hartshorn said that he is asking for a variance for frontage so he could eventually have a single family home. Mr. Gartrell continued, saying that it was his understanding that Mr. Hartshorn has enough acreage in Warner to build a single family home, but did not have enough frontage. Further, the only frontage is on a highway in the Town of Hopkinton, and he will need a variance to provide access to the Warner property from Hopkinton. Mr. Hartshorn asked why he would need a variance from Hopkinton since the use will be in Warner. Mr. Gartrell referred to the Churchill case and the RSA and said that it is not a use issue in Warner, because he has adequate acreage in Warner to build a single family home. He said that the variance pertains to the Hopkinton parcel where the only frontage is and is required for access to the Warner property. Mr. Hartshorn said that he thought that was in contradiction to RSA 674:53, Section III. Mr. Gartrell replied that that was why the joint meeting of the Boards was necessary. He said he thought it was not unreasonable for the Boards to consider the purpose for the variance that Mr. Hartshorn is seeking. He continued to say that the house will not be in Hopkinton, and the tract in Hopkinton is only being used for access. Mr. Hartshorn agreed. Mr. Gartrell said the ordinance has dimensional requirements of frontage for a *lot* and all Mr. Hartshorn wants is to use it for *access* to a lot which he is going to use. He said he thinks the issue under the Statute is whether Mr. Hartshorn has justification for the variance to use Hopkinton property, which is less than 200 feet of frontage, for access to the Warner property – not to build on it, not to use it for anything else except access. Mr. Hartshorn agreed and proceeded to say that if he is denied the variance, he has a hardship because he then cannot use the lot in Warner.

Ms. Mical asked Mr. Gartrell if it was his opinion that the Warner frontage requirement of 200 feet is what is to be considered, not the 300 feet that Hopkinton requires for their zoning district. Mr. Gartrell said that he believes that it is a dimensional variance and the 200 feet based on Warner's requirements would be proper to consider. However, he noted that if it were granted, the only use allowable for the Hopkinton tract would be for access to the Warner lot. Mr. Hartshorn said that he must maintain the acreage, borrowing from the Warner lot, for the Hopkinton requirements and the 300 foot frontage requirement for his home which is in Hopkinton. He said his plan would be to maintain the 3 acres required for the building in Hopkinton when he subdivides.

Ms. Mical asked if there were any further questions. Ms. Gray asked what the frontage for the access road is, as it goes off of Pleasant Pond Road. Mr. Hartshorn said he wasn't sure but thought it was 60 feet, but whatever Warner requires. Ms. Gray said she couldn't see where the house is on the lot. Mr. Hartshorn showed her on the map where it was. He said the town line goes right through the house. He said the house is on Hopkinton lot 206-21. Ms. Mical said she understood that Mr. Hartshorn is requesting a variance for the purpose of building a driveway for access to his Warner lot. Ms. Gray asked if he had checked the setbacks based on the proposed line of the subdivision. Mr. Hartshorn said yes, and the lines are based on the setbacks. Ms. Gray asked, "When was the last time the land was subdivided?" Ms. Mical said the Warner section has not been subdivided in many years. There was a lot line adjustment in 2004.

Ms. Gray asked who the emergency responder is. Mr. Hartshorn said he thought it would be whoever is closest. Ms. Mical said she thought it would be Hopkinton who would issue the 911 number for any new structure because the access is in Hopkinton. She said that the building permit would come from Warner, but because the road is in Hopkinton, the 911 number would come from Hopkinton. Mr. Koontz asked how the 911 responders would know where to go. Ms. Mical explained that it would be whoever is closest. Ms. Krzyzaniak said that she believed because the structure would be in Warner, then the Warner Fire Department would be responsible, however, she knows there is an agreement between Warner and Hopkinton about emergency response. There was further discussion about 911 responders.

Ms. Gray said she understood that this is being called a driveway, not a road. Mr. Hartshorn said yes, for the intents of this meeting. Ms. Gray asked if it were necessary to give a variance for the total road frontage. Ms. Mical replied that since 300 feet is already "locked up" with the Hopkinton building lot, and then there is only about 115 feet left of the frontage and that is where the variance is needed. Mr. Gartrell added that 300 feet of the frontage is pertinent to the currently existing house. He said that, ultimately, Mr. Hartshorn will have to get a subdivision to increase the acreage to support that house, as well. He said he believed the question for the Warner Board is, "Of the remaining frontage in Hopkinton, would we permit a driveway to be constructed on less than 200 feet of frontage?"

Mr. Perkins asked what happens if the Boards disagree. Mr. Gartrell said he thought that was where the statute comes in. The lot that straddles a town line is treated as one lot. There are exceptions, but he said that he believes that the portion of the lot that is in Hopkinton is not really a free-standing lot, so that the frontage requirement is really a question of whether it would support the access way to the building lot which is in Warner. Mr. Perkins reiterated that he understood, then, that the variance decision was up to Warner because the major part of the use is in Warner. Mr. Gartrell replied yes. Mr. Perkins then referred to page 7 of the Churchill v. Dover case and read from RSA 674:53, Paragraph IV:

" . . . provided however that the sole issue which may be addressed or regulated by the adjoining municipality [which he thinks is Hopkinton] shall be the adequacy of such street access, and the impact of the proposal upon it."

Mr. Perkins asked if this did not give Hopkinton the right to determine the adequacy of the street access. Mr. Gartrell said he believed that is why the two Boards need to meet and come to an agreement. Mr. Perkins asked again what happens if the Boards disagree. Mr. Gartrell said he thought the Boards might have to seek a declaratory judgment. Mr. Davies asked how the second paragraph on page 8 of the Churchill case applies here. He quoted, "We construe this language to mean . . . that each municipality is responsible for determining . . ." Mr. Gartrell said yes. Mr. Perkins said he understands then that access is put in a completely different category. Ms. Mical said she thought it should be Hopkinton's requirements, not Warner's, because the variance is strictly dealing with the road frontage; it's not dealing with subdivisions or buildings. Mr. Davies said that he read it that both towns are responsible and if both said yes, then it was okay. He continued that if either town said no, then it would not be allowed. Mr. Perkins said he thought there are two issues: which set of criteria apply, and then it's still a case of both Boards have to agree to the variance. Mr. Gartrell said he believes that Hopkinton has a right to look at the access issue. He quoted from Churchill v. Dover, page 8:

"The respondent [Dover] urges an alternative construction: 'Read as a whole, RSA 674:53 provides for full compliance with the regulations of all involved municipalities with the exception of the situations where the impact upon a municipality is only access.' We believe such a statutory scheme would be unworkable, as it is not difficult to imagine a situation in which the regulations of adjoining municipalities could irreconcilably conflict. In addition, the respondent's proposed construction would allow the neighboring municipality to prevent or otherwise regulate the entire project in the first municipality no matter how slight the overlap into the neighboring municipality. Because we presume that the legislature would not pass an act leading to an absurd result . . . we reject the respondent's construction."

He continued, based on this access is a different category and there is a weighing of the impacts on the two municipalities. He said the principal issue is that you could put build a residence in Warner, but for some accessibility to its lot because it doesn't have any frontage. If the only thing that the Hopkinton land would be used for was the access, and the Boards could not agree, then the issue is whether the tail is wagging the dog, or is it the other way around. He said, that, if, feasibly you

could have access without imposing a great burden on Hopkinton, and just allow it for a driveway, then that would be permissible.

Ms. Loz said that she thought that the Supreme Court in the Churchill case said that because the land and buildings were in Rollinsford, then the access would be controlled by Rollinsford, and not Dover (or Warner and Hopkinton, in this case). Mr. Gartrell said the fundamental issue in the Churchill case was the density of the development and Dover had a less dense regulation and they were trying to put a more dense development in a neighboring municipality. He said the access was not the primary focus in the case; it was the density and Dover was trying to impose its density requirement on Rollinsford. Ms. Loz asked if, therefore, this case does not fit the situation. Mr. Gartrell said that it actually is not far off from the current case. He said if the issue here were that this were going to create a terrible traffic situation on Pleasant Pond Road, then it might be a different situation and it would give Hopkinton a much stronger stake in the question.

Ms. Krzyzaniak told Mr. Hartshorn that when he was before the Hopkinton Selectmen and she was in attendance, it was her impression that he planned to subdivide the Warner property into more than one building lot. Mr. Hartshorn said, at this time, no. Ms. Krzyzaniak said that she was talking about the time he was before the Hopkinton Selectmen after he had moved the house after he had requested the building permit and it was over the Warner line. She said at that time, he had talked about subdividing the Warner land and making many more buildable lots than the one he is now requesting. Mr. Hartshorn agreed that he had said that, but he said now he does not know what the future holds. Ms. Krzyzaniak said her concern is that you were trying to get a driveway in to satisfy being able to get into that lot and then, sometime in the future, you might want to subdivide this land and use this little access which will be only a driveway. Mr. Hartshorn said that the little access will be based on the regulations for the town in which it is located. He said the primary purpose is to get the back land away from his house and be able to use the back land. Ms. Krzyzaniak asked if he remembered her saying that night that she hoped he wasn't going to use this man-made problem to get access into that back land. Mr. Hartshorn said he might remember the comment but he did not know what to say about it now. Ms. Krzyzaniak said that she has the feeling that Mr. Hartshorn is just using this to his advantage to get the driveway or roadway to get access to the back land so that he can subdivide it. Then, she said, Hopkinton will be stuck with whatever number of houses you can put there, and all coming out through this little roadway onto Pleasant Pond Road. She said if he came to the Planning Board, they might really be concerned if that were going to be a big subdivision. Mr. Hartshorn said right now he has a hardship because he cannot use the lot for anything. To correct this, he said, he needs, first of all, to get the variance and then go before the joint Planning Boards to get their approval for his subdivision.

Mr. Koontz asked if timber had been removed from some of the land. Mr. Hartshorn said it had been about seven years ago before the lot line adjustment. Mr. Koontz said that that then is a use. Mr. Hartshorn agreed. Ms. Krzyzaniak asked if the lot line between Hopkinton and Warner had been officially adjusted in the deeds because Mr. Hartshorn had built his house over the line. Mr. Hartshorn indicated on the map where the line is and where the frontage is. He said he has 415 feet total, 300 feet from the beginning of his house lot and then 115 feet to the end of the proposed access lot, with 60 feet being the narrowest point. There was some further discussion about the maps and the various logging roads and wetlands.

Mr. Davies asked which zoning district would determine what the required frontage is. Ms. Mical said that we have always gone by wherever the road frontage is, which is R-2 in our case. Ms. Gray asked if Mr. Hartshorn had been to the Planning Board for a conceptual yet. Mr. Hartshorn said no.

Mr. Davies asked when Mr. Hartshorn had received the permit for his house. Mr. Hartshorn said about 2-3 years ago. Mr. Davies continued to say that at that time Mr. Hartshorn had 415 feet of frontage which was enough for 2 lots in the R-2 zoning district of Warner at that time. He said at

that point in time, it could have been looked at possibly as two lots and as things progressed, it has become required that it have 300 feet of frontage because the house was built in Hopkinton.

Ms. Mical asked if there were any other questions. Mr. Rodgers asked how many houses the land could support, based on Warner's R-2 and the wetland and slope areas. Mr. Hartshorn said that based on the combination of the two districts, OR-1 and R-2, 10 houses would be possible. Ms. Krzyzaniak asked if that included Lot 6. Mr. Hartshorn said that it would include Lot 6 and the number is either 9 or 10. He said he didn't remember if the 10 included the Hopkinton one. Mr. Rodgers said, then, that it is possible to build either 10 or 11 houses in this whole area, as a maximum.

Mr. Koontz asked if 10 houses were built on that lot, where the children would be picked up for school. Mr. Hartshorn said he didn't know. Ms. Krzyzaniak asked where he chose to send his children to school. Mr. Hartshorn said they aren't old enough yet. Ms. Mical said she thought that the agreement with the Board of Selectmen in Hopkinton said that his children will go to the Hopkinton schools. Mr. Hartshorn said that if there were a road there, there would be a turning point and it would make sense for a school bus to turn around there. Ms. Krzyzaniak read from the agreement and said that the children will attend Hopkinton schools.

Ms. Mical asked if there were other questions. Ms. Loz asked who will grant the variance. Ms. Mical said that each town will do their own voting. Ms. Gray asked Mr. Hartshorn to please cover the criteria for a variance. Mr. Hartshorn read from his Warner application:

"A. No diminution in value of surrounding properties. -- Allowing the lot with 105± acres to have frontage of 115.63 feet will not decrease the value of adjoining properties. Unique to this lot access to actual buildable area would be 1000± feet off of Pleasant Pond Road.

"B. Granting the variance will not be contrary to the public interest. -- Without the variance, I will have to put in a road of at least 1000 feet without applying for a variance, just meeting the regulations of the town. That would not be reasonable, at a cost of over \$300,000 just for one building lot.

"C. Denial of the variance would impose unnecessary hardship upon the applicant. The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the zoning ordinance and thus constitutes the necessary hardship. Road cost for one lot prevents me from feasibly using the lot as a building lot. I believe that building lot is a reasonable use of the land.

"D. By granting the variance, substantial justice will be done. -- Granting the variance will allow the creation of a building lot with 115 feet of frontage.

"E. Use will not be contrary to the spirit of the Ordinance. Creation of 1000± foot road for one building lot is unreasonable."

Ms. Mical asked if there were any more questions from the Boards. Mr. Barnard said that at some point, if Mr. Hartshorn puts in 9 or 10 houses, a road will have to be built. He said that, given that, he did not see how there could be a hardship for not granting this variance. Mr. Hartshorn said he did not want 9 or 10 house lots. He said he just wants one. Mr. Koontz asked if it was Mr. Hartshorn's contention that having the expense of building a road prevented him from a reasonable use of the land. Mr. Hartshorn said yes. He said he thought a building lot was a reasonable use of land. Mr. Koontz followed up saying that he could build a road and use the property as he wants to use it. Mr. Hartshorn said yes, he could build a road and have a conceptual of 10 lots. He said that is not what he wants to do. He said it would be foolish. It is not what he wants to do right now. He said that either he gets the variance or he has to engineer a road and get joint Planning Board approval for one building lot, which is unreasonable. Ms. Gray asked what would happen if he did nothing. Mr. Hartshorn said that he would then not have a buildable lot. Ms. Gray said that when Mr. Hartshorn bought the land, he knew that section in Warner was "land-locked." Mr. Hartshorn said he knew there was a municipal boundary that went across it, but he said he did not

understand that it would be "land-locked," resulting in a hardship. Ms. Mical asked when he bought the land he knew that the road was in Hopkinton and he knew that their zoning required 3 acres and 300 feet of road frontage and that that lot had 415 feet of road frontage. Mr. Hartshorn agreed and said it seemed the right thing to do at the time to build the house in Hopkinton because it required a shorter driveway, less money, less utility poles. It seemed that the most cost effective place to put the house was in Hopkinton. Mr. Perkins added that Mr. Hartshorn, by making that decision, destroyed his ability to have the required frontage to subdivide without a variance. Mr. Hartshorn agreed. Mr. Perkins asked if in effect, Mr. Hartshorn had created his own hardship. Mr. Hartshorn agreed that it could be looked at that way.

Ms. Krzyzaniak said to Mr. Hartshorn that he knew that the land in Warner had no road frontage when he bought it. She added that he knew that he could do nothing with the back land without a road through the Hopkinton section. Mr. Hartshorn agreed. She asked him if he'd bought the Warner and Hopkinton land at the same time. He said it was all one piece with three tracts. She said, then, at that time, he did have access to the back land, but, by placing the house where he did, the back land became land-locked. Ms. Mical said that the Warner land was land-locked at the time it was purchased because the access to the Warner land had to be through Hopkinton.

Ms. Mical asked if there were any other questions. There were none. Ms. Mical closed the meeting and opened the public hearing. She asked if there were abutters who wished to speak. Mr. Roger Dubois, 324 Pleasant Pond Road, Hopkinton, said they only had concerns which were expressed at the last meeting. He asked if Mr. Hartshorn was proposing only one home, as opposed to many. Mr. Hartshorn said yes. There was no one else who wished to speak. Ms. Mical closed the public hearing and re-opened the meeting.

Mr. Hartshorn said that when he decided where the house was to be placed, he was thinking about the least amount of cost. He said he thought that any future use of the land in Warner would require a long driveway, selling it as a state lot, or construction of a road and developing it into building lots. Ms. Krzyzaniak asked if he didn't need the piece of Hopkinton land to meet the setback so that he didn't have to come to Hopkinton for a variance when the house was built. Mr. Hartshorn agreed.

Mr. Davies asked if Mr. Hartshorn had been to the Warner Planning Board for a Conceptual Consultation. Ms. Mical said no. Mr. Davies expressed concerns about the amount of wetlands in the area where the driveway would be built. Mr. Hartshorn said he was not aware of any wetlands in the area and added that the variance could be granted subject to Planning Board approval. Mr. Hartshorn indicated on the map where the wetlands and gravel areas are. There was further discussion about the map, abutters and other land features. Mr. Hartshorn was asked about the cost of building a road and he said, probably, hundreds of thousands of dollars. There was more general discussion as the Board Members looked at the maps.

Mr. Perkins asked if Mr. Hartshorn subdivided as is shown on the map, how the larger lot becomes buildable. Mr. Hartshorn explained if he gets the variance for the shorter frontage, then he would have access and the acreage is available for building.

Ms. Mical asked if there were any further questions. There were none. She asked Hopkinton if they would prefer to have their discussion and vote first or second. Ms. Krzyzaniak said they would vote second.

Ms. Mical turned to the Warner Board Members and asked for any further discussion. Mr. Rodgers asked if it was determined that it will be the Warner R-2 200 foot requirement which is to be used. Ms. Mical said yes, Warner's zoning regulations are the ones that will be followed in this situation. Mr. Davies said that he is concerned that at one point in the history of the project, the subdivision as now proposed could have occurred without the need for a variance. He said that decisions made

by Mr. Hartshorn have brought him to the point where he must have a variance to access the back land. Mr. Davies continued to say that he thought that by granting the variance, justice would not be done because he has created his own problem, making Item D. an issue.

Mr. Barnard asked Mr. Hartshorn where the road would go if the variance were denied. Mr. Hartshorn showed him on the map. Mr. Barnard asked if the plan would meet all the specifications for a Class V road, including the distances from side to side. Mr. Hartshorn said yes, based on both Hopkinton and Warner's regulations from last year. Mr. Barnard said he thought that in the future Mr. Hartshorn would have to build a road, anyway. Mr. Hartshorn said that the market is bad for lots today, so he cannot know what will happen with the back lot. He said it could also be sold as a state lot or just to be used for agriculture. But, he said, he still needs the access.

Ms. Loz asked if the frontage of the other properties in the area do meet the requirements. She said if they do, then it may not be in keeping with the neighborhood. Mr. Barnard asked how Hopkinton feel about the variance. He wondered if it affects Hopkinton more than it does Warner. Mr. Koontz said he is trying to understand why Mr. Hartshorn is asking for the variance. He said he would like to know what his plans are.

Ms. Mical said all we are considering is the variance of 85 feet to our requirement. Mr. Rodgers said that if all this land were in Warner and someone had 105 acres and 115 feet of frontage, he had no doubt that the variance for 85 feet would be granted. Mr. Davies asked if it would make sense to discuss each item on the application form.

Ms. Mical went through the items, asking, "Is there any diminution of value of surrounding properties that would be suffered?" She asked if the Board felt that Mr. Hartshorn's answer was appropriate for the question. He said, "Allowing the lot with 105± acres to have frontage of 115.63 feet will not change the value of adjoining properties." Some Board Members said they did not have a problem with this answer. Mr. Holt said it was hard for him to see it as just that one lot, but he did not see that it would decrease the value of the other properties.

Next, Ms. Mical, continued, "Granting the variance will not be contrary to the public interest." She said Mr. Hartshorn's answer was "Without the variance, I will have to put in a road of at least 1000 feet." Mr. Davies said that doesn't have anything to do with the public interest. Other Board Members agreed. Mr. Davies continued to say that he saw no issue with putting in a single family house there. Ms. Mical asked if granting the variance would be contrary to the public interest. Ms. Loz asked if she meant the abutters. Ms. Mical said the abutters or anyone else. Mr. Davies said the public interest might be roads, schools, other public services.

Ms. Mical continued, "Denial of the variance would impose unnecessary hardship upon the applicant." Mr. Hartshorn's response, "The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the zoning ordinance and thus constitutes the necessary hardship." Mr. Rodgers said that he had probably created his own hardship as far as the road frontage issue goes. Mr. Davies added that he has a hardship today, but looking back at the history and he's been part of it, he has a self-created hardship. Ms. Loz agreed.

Ms. Mical continued with D. "By granting the variance, substantial justice will be done." Mr. Davies reiterated that he thought this was related to the hardship issue. There is no justice to be done because it is a self-created situation, so it's nothing that he stumbled into and unknown up front.

Ms. Mical concluded, "The use must not be contrary to the spirit of the ordinance." Ms. Loz said that the 200 feet frontage is the ordinance and granting the variance would be in violation of the spirit of the ordinance.

Ms. Loz MOVED to DENY the application for the variance on the 200 foot frontage because it would be contrary to the spirit of the ordinance and it will not be in keeping with the rest of the neighborhood and the frontage of the other properties in the neighborhood. In addition, it would be an odd thin parcel of land that would not be in keeping with the rest of the neighborhood. Mr. Holt SECONDED.

Ms. Mical asked for discussion on the motion. Mr. Davies asked about the hardship and substantial justice issues (C and D) being included in the motion.

Mr. Holt MOVED to AMEND the motion that it was a self-imposed hardship due to the applicant's change of location of the house. Mr. Barnard SECONDED.

Ms. Mical asked for discussion on the amendment. There was no further discussion. Vote on the amendment: Mr. Barnard, Yes; Mr. Holt, Yes; Mr. Loz, Yes; Mr. Rodgers, No; Ms. Mical, Yes.

Ms. Mical asked if there was further discussion on the motion. There was none. She asked for a vote on the motion with the amendment as passed, including C, D and E. She explained a Yes vote will deny the variance. Mr. Barnard, Yes; Mr. Holt, Yes; Ms. Loz, Yes; Mr. Rodgers, No; Ms. Mical, Yes.

The MOTION was PASSED. Ms. Mical told Mr. Hartshorn that Warner had denied the variance request and asked Hopkinton to proceed.

Ms. Krzyzaniak asked for discussion on the variance request. Mr. Koontz said he didn't think there had been much discussion about the unique circumstances of the lot. He said that there had been no discussion about if there were other lots in the area with the same circumstances.

Mr. Perkins MOVED that the application for a variance be DENIED because of the failure of the applicant to satisfy our variance requirements 3 (substantial justice), 4 (spirit and intent of the ordinance), and 5 (hardship). Mr. Koontz SECONDED.

There was no further discussion. Ms. Krzyzaniak asked for a vote. Mr. Rinden, Yes; Ms. Gray, Yes; Mr. Koontz, Yes; Mr. Perkins, Yes; Ms. Krzyzaniak, Yes. The MOTION was passed unanimously to DENY the variance.

Ms. Mical said both Hopkinton and Warner have denied the variance and told Mr. Hartshorn he had the right to appeal within 30 days. Mr. Hartshorn thanked the Boards and left. The Hopkinton Board departed. Mr. Gartrell departed.

## **2. MINUTES**

Ms. Mical asked for corrections, comments, etc. on the minutes for February 20, 2008. Mr. Davies said that he was quite sure that he asked, on page 4, "When he placed the house." Ms. Lightfoot said she would correct that. No other corrections. Mr. Davies MOVED to approve, as corrected. Mr. Rodgers SECONDED. PASSED unanimously.

## **3. COMMUNICATIONS AND MISCELLANEOUS**

Ms. Mical said that the Board of Selectmen met tonight to discuss how they are going to do appointments. She asked if the Board had any recommendations to the Board of Selectmen for the one alternate position and two full member positions that are open this year – Mike Holt is the alternate; Joanne Hinnendael and Martha Mical are the members whose terms expire. Ms. Hinnendael has said she will not serve again and Ms. Mical has said that she will not apply. Mr. Rodgers said he thought it would be appropriate for the senior alternate to become a full member.

Ms. Mical agreed and said that would be Mr. Holt, and the next one would be Ms. Loz. Mr. Davies MOVED that Mr. Holt and Ms. Loz be recommended to the Board of Selectmen to be full members. Mr. Rodgers SECONDED. The vote was yes, unanimously. Ms. Lightfoot will write a letter to the Board of Selectmen requesting that they consider this.

Ms. Mical reported that Paul Violette asked for a volunteer from the Zoning Board of Adjustment to work with the Master Plan Committee of the Planning Board. She said he later called to say that Ted Young had agreed to be the Zoning Board representative.

There was some discussion about other potential Zoning Board members. Ms. Lightfoot reminded members about applying for the April Land Use Conference and asked the members to submit them by Monday so the bookkeeper can write one check for everyone.

Mr. Davies asked about the arrangement of the application forms in the PDF file on the website. Ms. Lightfoot said she had a problem with it being called instructions for "appeal." There was some discussion and it was agreed to leave them as they are and if people have trouble with them, then we can make corrections as needed.

Mr. Davies then asked about how the Board votes. There was some discussion, but it was agreed to continue to vote as we do.

Mr. Holt asked if there was anything that the members need to do now in regard to the court decision they received on the Smart Growth et al. v. Town of Warner. Ms. Mical said no. She said she understood that there is going to be a reconsideration request by the hotel lawyers.

Mr. Rodgers MOVED to adjourn. Mr. Holt SECONDED. PASSED unanimously.

Meeting adjourned at 9:05 p.m.