



# TOWN OF WARE

## Planning & Community Development

126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

## Zoning Board of Appeals

Meeting Minutes from

**August 24, 2022**

Select Board Room, Town Hall

### Zoning Board Members Present:

Lew Iadarola, Chairman  
Jodi Chartier, Vice Chairwoman  
Chuck Dowd  
Greg Eaton  
Phil Hamel  
David Skoczylas, Alternate

### Zoning Board Members Absent:

### Staff Present:

Rob Watchilla, PCD Department Director  
Stuart Beckley, Town Manager  
Anna Marques, Building Commissioner/Zoning Officer  
Kristen Jacobsen, PCD Dept. Admin. Assistant (remote)

### Public in Attendance:

Claudia Kadra, Ware Historical Commission  
Elizabeth Hancock, Town of Ware Planning Board (Alternate)  
Donald Desjardins  
Yasser Fares

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## PLEDGE OF ALLEGIANCE

Chairman L. Iadarola called the meeting to order at 7:00pm and, at the Chairman's request, C. Dowd led the Pledge of Allegiance.

[J. Chartier recused herself from the Public Hearing](#)

### Public Hearings

- a. V-2022-01 (Yasser Fares – 30 Anderson Road)
  - i. Applicant is requesting Variance relief from a side yard setback in order to construct a car port for a primary residence. Site Location: 30 Anderson Road. Deed recorded in the Hampshire County Registry of Deeds, Book 12855, Page 30. Assessor's Parcel 10-0-123. Zoned: Rural Residential (RR).

R. Watchilla displayed a drawn map depicting the area that Y. Fares proposed building a carport and demonstrated the area where the proposed structure would encroach on the sideline set back. The carport would be 12'x23'.

L. Iadarola asked what type of flooring material would be used. Y. Fares answered that initially he would use stone (gravel) but hope to be able to pour a foundation in the future.

L. Iadarola asked why Y. Fares had chosen not to enclose the carport and turn it into a garage. Y. Fares responded that to do so would require more construction efforts and preferred to leave it open.

L. Iadarola requested comments in support or against the proposed structure. Y. Fares neighbor D. Desjardins spoke in favor of Y. Fares and mentioned that before Y. Fares purchased the property it was basically run down but after all of the upgrades Y. Fares had done it looks like a nice home.

L. Iadarola asked if that was D. Desjardins garage in one of the photos. D. Desjardins responded that it was. D. Desjardins spoke saying he did not believe that Y. Fares' carport would impinge on his views. D. Desjardins suggested to the board that there should be a stipulation or clause which would say "construction should make the drainage go away from the foundation of the home to prevent erosion".

L. Iadarola inquired if D. Desjardins would sell Y. Fares 12' of his property. D. Desjardins stated he would not as he did not wish to run the risk of a potential hardship in the future.

L. Iadarola asked if anyone else wanted to speak. No one added to the conversation. L. Iadarola closed the open portion of the meeting.

L. Iadarola spoke stating the bylaw states there must be a 30' side setback and stated there are many similar parcels in Ware. Without making a change to the bylaw it is extremely difficult to approve one and deny others. L. Iadarola continued by saying that is why they are exploring options for Y. Fares to build his desired structure and still abide by the bylaws.

D. Skoczylas inquired as to the measurements of the carport and the land.

D. Desjardins inquired why L. Iadarola asked Y. Fares if he had considered building a garage. L. Iadarola explained that he was trying to solve the issue by suggesting an alternative that would put the structure to the rear of Y. Fares' home, which would only need to abide by a 10' set back.

Y. Fares spoke saying he felt it would look odd. Y. Fares continued saying garage would close off the railing to his deck as well as block the access to the storage area underneath the deck. L. Iadarola suggested if it were a garage, he create an access door to the storage area under the deck.

Y. Fares stated he wanted the carport alongside of the house as a complement to the house. Y. Fares continued saying that there is a large swing set in the back yard, and he feels that if the carport is placed toward the rear of the home, he would lose the use of most of his property.

L. Iadarola stated that Y. Fares needed to work within the bylaws which require a 30' sideline setback.

D. Desjardins spoke saying he believed the carport would look more attractive if it were on the side of the house. L. Iadarola responded that it probably would look more attractive however, Y. Fares did not have the required setback to build there. L. Iadarola continued by saying the reason for the setback distance was because the town wanted to maintain a buffer zone between neighbors.

D. Desjardins stated he did not feel Y. Fares would encroach on his property.

D. Skoczylas asked if L. Iadarola had suggested the carport be built on the backside of the porch. L. Iadarola stated that if he had the setback, it could be attached to the deck. A. Marques asked if L. Iadarola was speaking of connecting the two structures with a door. L. Iadarola clarified that Y. Fares could connect the structure to the rear of his house maintaining the 40' rear and 30' side setback as D. Skoczylas suggested.

A. Marques responded stating that if the two structures are connected it then becomes a single structure and would need to abide by the sideline setbacks

D. Desjardins asked if 100% of the structure would need to be behind the house which L. Iadarola confirmed that it would.

P. Hamel inquired as to the location of the septic tank. L. Iadarola confirmed that it was in the back yard. P. Hamel suggested that if Y. Fares needed another parking space, he could make one but not the structure which L. Iadarola agreed with.

D. Skoczylas asked if it would be possible to build the structure off the back corner of the deck. L. Iadarola confirmed that it was possible and there was room.

D. Desjardins commented stating he thought Y. Fares' leach field was in the back corner of the yard. Y. Fares clarified that the leach field was behind the swing set.

Y. Fares stated he had previously reviewed that option and others with A. Marques. Y. Fares continued stating he felt if the structure was placed toward the rear of his property, he would be sacrificing the majority of his yard.

R. Watchilla asked Y. Fares how much yard he felt he'd be sacrificing if he placed the structure in the rear of his property. Y. Fares answered saying he felt it would take up a large portion of the yard, it would close off the deck railings and access to the storage area under the deck.

A. Marques spoke saying she recalled discussing what would be more aesthetically pleasing and that by placing the carport in line with the house would be more aesthetically pleasing.

L. Iadarola spoke saying that often the town has seen temporary structures that end up getting closed off and becoming permanent structures.

D. Desjardins spoke saying that one of his rear neighbors had built a shed on his (D. Desjardins') property and when the home was sold D. Desjardins had to sign a letter from an attorney stating he would not object to the shed being on his property.

D. Skoczylas asked Y. Fares if placing the structure in the rear of his yard would be a possibility for him. Y. Fares responded that it was not and felt it would look out of place there.

D. Desjardins spoke saying he felt it would look neater along the side of the house.

L. Iadarola stated that variances are permanently with the property.

Y. Fares asked if it was the same with grandfathered business. L. Iadarola clarified that the definition of grandfathered is misused and that it only applies if something was legal at the time of construction.

D. Skoczylas asked if Y. Fares felt any of the options presented by the Zoning Board would be a possibility. Y. Fares stated no, they were not.

P. Hamel asked if the roof of the proposed structure would be used as a patio or sitting area. Y. Fares stated that no it would not.

L. Iadarola stated that as much as the board would like to accommodate Y. Fares request, he felt there was no way to get around the bylaw. He Encouraged Y. Fares to consider any of the options presented to him.

**Motion** made by L. Iadarola to deny V-2022-01 (Y. Fares – 30 Anderson Road) on the basis that it conflicts with the sideline setback as there are viable alternatives which would abide by the bylaws. Seconded by P. Hamel

|              |                |
|--------------|----------------|
| L. Iadarola  | Aye            |
| J. Chartier  | Recused        |
| C. Dowd      | Aye            |
| G. Eaton     | Aye            |
| P. Hamel     | Aye            |
| D. Skoczylas | Aye, Alternate |

**All in favor. Approved 5/0/0.**

J. Chartier rejoined the meeting

**ADMINISTRATIVE**

**Approval of minutes from Wednesday, June 1st, 2022.**

**Motion** made by J. Chartier to approve minutes from June 1, 2022. Seconded by C. Dowd. There was no additional discussion.

|              |                |
|--------------|----------------|
| L. Iadarola  | Aye            |
| J. Chartier  | Aye            |
| C. Dowd      | Aye            |
| G. Eaton     | Aye            |
| P. Hamel     | Aye            |
| D. Skoczylas | Aye, Alternate |

**All in favor. Approved 6/0/0.**

**OLD BUSINESS**

Continued discussion on pre-existing non-conformities  
Discuss answers provided by Town Counsel at the June 1 meeting.

L. Iadarola spoke of receiving an email from Town Counsel providing clarification on the term ‘Grandfathering’. The email stated a building or use, and its non-conformities are only considered grandfathered if the non-conformity was legal at the time of construction or when the use started.

L. Iadarola spoke of RTs Welding. A Class III license was issued by the Selectmen after being rejected by Planning and Zoning Boards. L. Iadarola stated that A. Marques could now pursue that because the Select board had no basis to give them the license. A. Marques stated there was no official violation present.

S. Beckley stated that what L. Iadarola was proposing was the junk yard that is not legally allowed in that zone, therefore it is not a legal non-conforming business and therefore should not be allowed to exist. R. Watchilla stated it allegedly lacks the protections and RT welding believes it should be grandfathered.

L. Iadarola suggested that if A. Marques were to tackle it then she should have Town Council involved because of the complications with the issue. A. Marques stated that she is currently looking into it and asked what he felt the best way to approach that would be. L. Iadarola added he understands the frustrations of the neighboring properties.

D. Skoczylas asked when the license had been issued, L. Iadarola responded he believed it was issued in the early 2000’s.

A. Marques cited 1.9.3 in the Zoning Bylaw which states non-conforming uses may be extended by a Special Permit granted by the Zoning Board of Appeals as long as the extension or alteration shall not be substantially more detrimental to the neighborhood than the existing non-conforming use.

R. Watchilla stated that the Zoning Board of Appeals issued a Special Permit for Crescent Street and was not aware of a previous instance when a Special Permit for a non-conforming use had been issued.

L. Iadarola stated that Y. Fares could have also been issued a Special Permit to build his carport although he'd still require a variance

L. Iadarola asked if the changes to the bylaws had been submitted to the Attorney General. S. Beckley responded that it could take months to receive a response. L. Iadarola asked if that meant they could not be implemented until then. S. Beckley clarified that they exist from the time they were adopted at Town Meeting.

R. Watchilla added they could still be amended by the Attorney General and the amendments from March 2021 had taken until August of 2021 to receive the Attorney General's approval. R. Watchilla stated that the Zoning Bylaw changes were posted on the website for public viewing.

L. Iadarola proposed changing the bylaw for lakefront homes which would allow accessory structures to be constructed in front of homes. A. Marques asked if that meant they would keep the 5' or 10' set back depending on if it's a shed or a garage. L. Iadarola responded that he would keep the setback requirement and they should be allowed no further forward than the existing structure. A. Marques asked if that meant keeping the accessory structure in line with the house. L. Iadarola confirmed saying he felt it made sense and D. Skoczylas agreed. L. Iadarola asked A. Marques to draft something up for it and to circulate it.

R. Watchilla asked if L. Iadarola intended to have this ready for Fall or Spring Town meeting, cautioning that the Fall Town Meeting docket is full due to recent changes to the bylaw proposed by the Planning Board and that another meeting would be needed. L. Iadarola stated he felt his proposed changes were minor.

L. Iadarola asked what changes the Planning Board had proposed. R. Watchilla responded stating that one of the changes would be a redrawing of the RB district altering the property lines in one area. J. Chartier asked if that was for the Tractor Supply and R. Watchilla and S. Beckley confirmed the address.

L. Iadarola stated other changes of this nature had been discussed between the Zoning Board of Appeals and Planning Board.

J. Chartier spoke about the areas to be designated within the proposed Rural Business Overlay District. R. Watchilla clarified that it had existed previously as the Residential Business II District. J. Chartier said it had been put forward by the owners of Canadian Tree, adding they

want propane storage on their property. S.Beckley stated that it wasn't only for the purpose of propane storage but for additional uses for the property.

R. Watchilla stated it had been a commercial corridor which allowed commercial uses in that area. R.Watchilla added the overlay district would be for larger parcels (5- acres +), however the majority of the parcels are around 1 acre in size.

J. Chartier stated that as per the Town's Master Plan no development is expected in the areas near the Quabbin. When the Master Plan was created the residents wanted the area to stay rural residential and to not allow for other uses.

L. Iadarola proposed the Zoning Board of Appeals could draft a resolution to counter the overlay district.

S.Beckley stated the Zoning Board of Appeals members could attend the public hearing.

L. Iadarola said the Zoning Board of Appeals and Planning Board should work together on these issues. S.Beckley added both of these cases had been brought forth by property owners.

J. Chartier inquired if it would be possible for the Zoning Board of Appeals and the Planning Board to have a joint meeting. R. Watchilla responded that they could request a joint meeting for September 1, 2022, however, they could not alter what had been submitted to the Select Board. R. Watchilla added that they could attend the Public Hearing and discuss the changes there.

The Zoning Board of Appeals discussed the process in which the Planning Board submitted changes to the Select Board independently and voted on the presented matters as they deemed appropriate. S. Beckley stated that was the job of the Planning Board under Massachusetts General Law. The Zoning Board stated they desired greater communication between the two boards.

E. Hancock (Planning Board, Alternate) reiterated that the Planning Board would not have been involved if the issues had not been brought forward by property owners.

The Zoning Board discussed ways in which they could be notified. R.Watchilla stated the Planning Board Agenda is posted on the website and they meet on the first and third Thursday of every month. If the Zoning Board of Appeals desired a joint meeting he would only need two days' notice, after which he could draft an agenda and have the Town Clerk stamp it. J. Chartier stated that checking the Town's website was not always possible. E. Hancock proposed a notification email be sent out.

L. Iadarola stated to S. Beckley he felt Y. Fares could have taken a chance and constructed the structure hoping his neighbors would not complain and the structure would not be caught. S. Beckley responded that was the responsibility of the Building Inspector.

Discussion continued between the Zoning Board of Appeals and A. Marques clarifying the processes in which she is able to issue tickets for infractions and the differences between zoning and building permit infractions. A. Marques also clarified that it is in keeping with her training to respond to zoning issues based on registered complaints, however, if the infraction is due to a building permitting issue she is then able to immediately issue a ticket. A. Marques noted the differences between zoning and building permit infractions and stated they are dealt with separately.

L. Iadarola asked how A. Marques would respond to an illegal carport. A. Marques stated her response would depend on the nature of the infraction. If the infraction was of a zoning nature she would need to wait until a complaint was filed however, if it was of a building permit nature she could immediately issue a ticket. A. Marques also stated that those rules were set in place by her predecessor.

L. Iadarola asked if there was a bylaw mandating houses to face the street.

A. Marques responded that there was not. She cited two homes constructed during the time of her employment that were purposely built with their fronts facing away from the street. One had been built to take advantage of the scenic views and the other to take advantage of the quieter setting.

## **NEW BUSINESS**

- a. Discussion on the role of the ZBA
  - ii. Address the role of the ZBA in regard to setting new zoning policy and influence, and its relation to the Planning Board and Building Commissioner.
- b. Discussion on burned buildings and its relation to the Zoning Bylaw
  - iii. Proposed discussion by Vice-Chair Jodi Chartier

The conversation over the role of the Zoning Board of appeals was addressed in the above conversation.

J. Chartier inquired if a bylaw she had heard of may be added to the Town of Ware bylaws to assist with burned homes. A. Marques clarified that it was not a bylaw but a code enforcement procedure. S. Beckley clarified that the town was attempting to copy that procedure and the situation is moving forward.

R. Watchilla added that there is a section in the meeting packet containing information regarding building structures damaged by fire along with details on the process of rebuilding on a non-conforming lot and stipulations for temporary housing on the site where reconstruction is taking place.

A. Marques spoke of information she had received from the Building Inspector in Springfield MA. She was informed that Springfield had adopted processes from the state of FL who created the processes in hopes of quickening the pace of rebuilding after hurricanes. A. Marques said Ware is looking to adopt similar measure in a scale appropriate to the town.

iii: Proposed discussion by J. Chartier on Battery Storage Facilities

J. Chartier presented research she had conducted in regard to battery storage facilities. The research stated the tech is very new and as such there are no clear standards for the development of these structures **set by state or federal government guidelines**. Also, there should be additional considerations for safety, environmental hazards, noise, aesthetics, operations, maintenance, and decommissioning must also be addressed. J. Chartier brought forward conversation on the Moratorium and spoke of hoping to quicken the pace in which bylaws are created regarding these structures.

L. Iadarola questioned how scale was defined regarding these structures. R. Watchilla responded that the Zoning Bylaws use Kilowatts, but the values of the batteries themselves are not the same. R. Watchilla continued by saying the previous research he had conducted stated the value at capacity needed to be appropriate to the number of batteries that compliments anything larger than 100 kilowatts, however, there is not an exact number that can be found and cautioned if a number were to be imposed it would be unwise. R. Watchilla suggested more research needed to be conducted.



R. Watchilla spoke of a meeting with the Planning Board which discussed the grant given to the P.V.P.C to conduct research along with the towns of Belchertown and Monson. The towns would form a committee to discuss language which would create a document to be shared amongst the towns to use in their own bylaws before the moratorium expires.

J. Chartier stated she feared the process would go beyond the moratorium expiration and stated she would prefer having a bylaw written presently which could be amended at a later time. R. Watchilla responded saying there was time to have something prepared for the spring meeting.

L. Iadarola inquired about the size of existing solar facilities in town. R. Watchilla stated they were all over 100 kilowatts.

J. Chartier asked if the utility plans were still submitted or if they were withdrawn as they could no longer be located on the town website. R. Watchilla responded that the application was incomplete which S. Beckley attested to.

S. Beckley stated the solar facility on Upper Church Street was 1.4 megawatts.

E. Hancock stated that most of the free standing battery storage banks are EV batteries repurposed after they reach 70% capacity in automobiles. At that capacity they are no longer sufficient for use in cars however, they can still generate electricity. The batteries tend to become unstable as they age which leads to concern of fire and environmental damage. The expected life of one of these batteries at that stage is 10-11 years after which there is no current way to recycle or dispose of them.

J. Chartier suggested having them bonded which E. Hancock agreed. E. Hancock brought up the current issues happening with Medway Grid, LLC. The company is attempting to file a petition to receive an exemption from the towns zoning laws in Medway MA.

J. Chartier stated she believes that Ware with its hydro power and solar fields is currently creating enough power for itself and its neighboring towns. J. Chartier added she didn't feel she was dismissing them and that battery storage would still be acceptable for solar fields to store what the facility produces.

R. Watchilla spoke cautioning the board wasn't able to discuss the regulation of solar on personal property according to state law and believes batter storage on personal property also applies especially if it compliments solar on personal property.

R. Watchilla advised against rushing a bylaw as it would create a poor product and stated there is enough time to create a better policy before the moratorium expires.

L. Iadarola asked how the Historic Commission is able to regulate it and tell the property owners they aren't allowed.

C. Kadra stated they hadn't proposed anything disallowing battery storage, but they would be required to have a 200' setback on scenic roads under the proposed Scenic Road Bylaw.

R. Watchilla mentioned that there will be a Public Hearing for the Scenic Road Bylaw September 15, 2022.

L. Iadarola asked what other development would be allowed and if industrial uses would be allowed in the Historic District. C. Kadra responded saying the Scenic Road Bylaw would not contain considerations

for that as it pertained to preserving roads that offer scenic features. L. Iadarola asked if the set back meant that the number of trees able to be cut 200' back from the road was limited. C. Kadra clarified saying that the Scenic Road Bylaw hoped to make the setbacks for large battery storage facilities to 200'.

R. Watchilla stated the Scenic Road Bylaw did not involve zoning and its sole purpose was to protect stone walls and street trees that are in the public right of way. If either feature falls on private property they are not included in the bylaw.

L. Iadarola asked if it pertained to state roads. R. Watchilla responded that as per state law all state roads are excluded.

J. Chartier cited a passage in the Master Plan which recommended Walker Road be included in the Scenic Road Bylaw.

**ADJOURN**

**Motion** made by P. Hamel to adjourn at 8:23 pm Seconded by J. Chartier.

- L. Iadarola      Aye
- J. Chartier      Aye
- C. Dowd          Aye
- G. Eaton        Absent
- P. Hamel         Absent
- D. Skoczylas    Aye, Alternate
- G. Staiti         Absent, Alternate

All in favor. Approved 4/0/2.

Minutes from August 24, 2022  
Respectfully submitted by,

Kristen Jacobsen  
Administrative Assistant  
Planning & Community Development

*Minutes Approved on: 10-26-2022*

|           |   |
|-----------|---|
| Iadarola  |  |
| Chartier  |  |
| Hamel     |  |
| Dowd      |  |
| Eaton     |  |
| Skoczylas |  |