

**Zoning Board of Adjustment
Town of Walpole
Wednesday, May 16, 2018
7:30 pm**

Present: Board Members: Chair Myra Mansouri, Vice-Chair Jan Galloway Leclerc, Tom Murray, Pauline Barnes. Alternate: Ernie Vose. Absent: Board member Judy Trow and alternate Bob Anderson.

Recording: Marilou Blaine. These minutes are unapproved and will be reviewed at the regular June 2018 meeting for corrections, additions and/or omissions.

Roll Call: Ms. Mansouri called the meeting to order at 7:30 pm. Alternate Mr. Vose was asked to fill in as a Board member.

Minutes: Pauline Barnes made several corrections – one typo, a couple of words left out or repeated. A motion was made to accept the minutes as corrected. The motion was seconded and approved by the Board.

Old Business:

This hearing has been postponed for a few months.

Public Hearing: Special Exception for Great River Consumer Cooperative Society, Inc., Route 12, Map 12, Lot 4-2 and 4-3 for parking, rural/ag to commercial. Convert a former chicken coop to a food co-op featuring local products. Article VIII C.1.

Kim Mastriani, president of the Co-op, is representing the organization.

If the Co-op returns, it will need a new application and drawings of the plan for the store and the parking lot. Later in the meeting, the Board voted to return the abutter and legal fees for this meeting. The amount was \$116.00.

Upcoming on June 20, 2018. Public Hearing for a Special Exception, rural/ag to commercial.

D&C Transportation, Orleans, Vt. Map 10, Lot 2. Proposed Use: Filling Station and Convenience store with Drive Thru. James Phippard of Brickstone Land Use Consultants LLC representing D&C Transportation. D&C Transportation owner, Paul Saba, withdrew his application at the WPB meeting at the Public Hearing for a recommendation for a Special Exception of a commercial project in rural/a – May 8, 2018. A return of \$112.00 will be sent to Brickstone Consultants for payment of the abutter fee and legal for the proposed June 20, 2018 ZBA meeting.

Signage: Doug Palmer has withdrawn his request for a Public Hearing for a sign for his business at 4 Ames Plaza Lane.

Update Matrix – the matrix for a Special Exception for a commercial proposal in a rural/ag district was discussed. It can be confusing for applicants who do not know what to do in their specific situation. The Board suggested adding three names. telephone numbers and emails to the Matrix so applicants may call someone to find out if they need a Variance, Special Exception or something else. The contacts will be the Chair, Vice-Chair and the Secretary.

All applicants are welcome to a ZBA meeting to discuss their proposals with the ZBA Board. Otherwise, if applicants know they need a Special Exception for their project in rural/ag, they go to the Planning Board first to request a Public Hearing for a recommendation for a Special Exception from

the Planning Board. However, the ZBA should be notified of the request because it is that Board that makes the final decision.

Regarding the matrix for property in Residential A and B, the only Special Exception is for: "Conversions of existing larger home to multi-family dwellings may be allowed by Special Exception from the Board of Adjustment provided the Board determines that the following conditions are met:

The property is suitable to accommodate multi-family use without adversely affecting the area.

Adequate off-street parking is available.

The exterior architectural appearance and/or size of the structure shall not be substantially altered.

The property has received Site Plan approval from the Planning Board." Article V – 7. This should be added to the Matrix document.

Ms. Barnes asked, What about an application that isn't complete? Does a completed application have to be given to Board before the Board goes ahead with the process.

Mr. Vose said that sometimes the Board allows the applicant to correct the application and then sends it to the secretary. Mr. Leclerc added, "If it's a small thing."

So they can still go to the Planning Board? The Planning Board gets the same application and drawings that the Zoning Board gets. If there is a major reason why the application isn't complete, the Planning Board will need to know. It just adds a month, Ms. Leclerc says.

Ms. Barnes said, "How does anyone know what to do? Shouldn't there be someone they can speak to when they are filling out the form. There should be something that says, "Let us help you."

Mr. Murray asked when an applicant comes to the ZBA someone should say to them that they have to go to the Planning Board first for a recommendation. "We should have the same path every time," he said.

Ms. Leclerc said I still think the matrix is a good idea. You need a Special Exception. And they can follow it.

Ms Mansouri said maybe we need an extra page explaining the difference between a special exception and a variance. And then some examples.

Ms. Mansouri pointed out that at the conference one speaker explained the difference between a Special Exception and a Variance. "A variance seeks to do something that is now allowed by zoning. A Special Exception is something that is allowed by Zoning if all conditions are met."

Mr. Vose suggested that what they need is to contact someone who knows what the ordinances say. There should be an email, telephone number or tell them to come to a zoning meeting.

Ms. Joanna Andros, WPB, alternate, said that in the gas station proposal the applicant came with full drawings, a traffic study and an application and the Planning Board was ready to go. Mr. Phippard presented a full plan to the Planning Board. Ms. Leclerc said he knew ahead of time because he was well-versed in all the ordinances, Master Plan, etc.

Report on Zoning and Planning conference in Concord in late April.

Ms. Trow submitted the Power Points on two of the sessions she attended: The role of the ZBA and the Decision-Making Process. These documents were passed out to the Board.

This conference had a lot of advice on decisions so they would hold up in court, Ms. Leclerc said. The Board should have a written statement saying why it decided something based on the criteria.

Ms. Barnes agreed and said the decision-making section referred to a lot of law cases.

Ms. Leclerc went to a solar presentation, which she said was interesting. The speaker was someone who sold a lot of panels in New Hampshire and had also written a sample zoning ordinance. He advised that solar panels are coming and it would be wise for communities to anticipate them and get an ordinance on the books before it happens. Some installations can be very large and don't have to be offensive to the neighbors. Ms. Leclerc said she would send a copy of the ordinance to the secretary to distribute to ZBA members.

Ms. Leclerc also went to the accessory dwelling session where there were several people talking how the change in law was working in their communities. Generally most people said it was working very well. People who weren't rich could add a DADU and could still live there as a rental.

Ms. Barnes said that was interesting because she thought of them as good in terms of people aging. Ms. Leclerc said there was an architect with pictures of places that were 750-or-1,000 square-foot units into all different types of areas with older homes like around here. "Everyone was all for them," Ms. Leclerc said.

Ms. Barnes said the best way to avoid going to court is to focus on procedure. There was a real emphasis on procedure and developing a record, as you go along, of what you are doing as a Board and checking your rules of procedure.

Pauline asked the speaker about a current situation where two different parties were asking for Special Exceptions to have commercial projects in a rural/ag district. The speaker said you have to be very clear. For example, if you have a round table covered by a white tablecloth and 8 chairs around it over her and a round table covered by a white tablecloth and 8 chairs around it over there, you have to be very clear on why you are treating one table differently than another table. Barnes said he was very forceful on that point.

Also mentioned at the conference was a "table of use," Barnes said. It a chart that shows what is permitted and what is not permitted in a particular district. Ms. Barnes had a sample chart from Alstead and passed it around. It's a pretty simple chart to use, Mr. Vose said.

One topic discussed was the variance criterion of substantial justice. The speaker said there was not a whole lot of information on this topic. The only thing that applies is, "if there is any loss to the individual that is not outweighed by a gain to the general public is an injustice."

Ms. Leclerc said, for example, if someone in the village wants a shed but because the lot is too small and the person doesn't have the proper land for a 20-foot setback, who does it hurt if there isn't a proper setback?

Ms. Leclerc said at the Co-op meeting three members had to recuse themselves. If the alternate missed the first meeting but can be brought up to speed and then knows what is going on with the proposal – has read the minutes, application for example - the alternate may serve on the Board for the continuation of the hearing.

Mr. Vose asked if the session addressed the fact that three people recused themselves and there wasn't a full five-member Board. Ms. Barnes said, "you do not have the right to a full-member Board. "No party is entitled to have a hearing by a full board."

If you have a policy, you must apply it to everyone, Ms. Leclerc said

There was a session on voting individually or as a Board for a Special Exception or a Variance. Ms. Leclerc said the speaker at the conference recommended that the Board vote as a group. She said that a vote on each criterion makes it possible for the proposal pass, but the intention of the Board may be to vote no on the proposal.

"Voting on Variances

Applicant must satisfy all of 5 criteria in RSA 74:33 to obtain a variance and must receive 3 votes in favor.

If the board votes separately on each of the 5 criteria, it is possible for every factor to have at least 3 votes in favor even if no single member voted that all 5 criteria are met.

Obviously, the board should discuss all 5, but there are varying opinions on whether to vote separately on each one."

Ms. Leclerc added that everyone that sat in on that conference session was happy with the new Dwelling Unit ordinance.

There was some discussion on sending registered certified mail or regular mail to abutter. Ms. Leclerc said that there have been cases when groups do not wanting something to go through, so they don't pick up their mail. Myra said it is better to have it return receipt registered. The Board then has a record of a letter being sent and the Post Office makes every attempt to get the letter to the person being addressed.

Ms. Barnes said one of the lawyers said she would much rather defend a Board that has done too much than a board that had done too little.

Request to return money

There was a request from Mr. Phippard and from the Co-op to return money not spent on sending letters to abutters and placing a legal in the newspaper. Mr. Vose moved that the money for abutters be returned. Ms. Mansouri seconded the motion and it passed unanimously.

New ordinances

Ms. Mansouri said that there were a couple of things the Zoning Board had to deal with during the rest of the year.

Write an article that will rescind the article voted on in March 2018 because it was illegal. She just wanted a change in a street address that was changed, but not recorded in the ordinance when 911 went into place.

Look into ordinances for solar and wind turbines. Ms. Leclerc has a link to the solar ordinance and will send it to the secretary and she'll get it to the rest of the Board.

Ms. Mansouri will write to the chair of the Planning Board about writing ordinances on both items.

Then the Carmody problem has to be resolved by rescinding the two specific lots on Ames Plaza Lane and have the those two lots taken out of Residential B and put into the commercial district.

Corrections: Mr. Vose corrected two items that were mentioned at two different previous meetings.

Mr. Dalessio's remarks at the April ZBA meeting about the reason Bensonwood went to Keene was because it was too difficult to get permission here in Walpole is incorrect because Bensonwood got permission to build on their property on Route 12. The reason they went to Keene was because they got a good deal and the building had already been built.

Mr. Vose also mention that at the May 8, 2018 meeting with the WPB, the person at the D&C Transportation hearing erred in her statement about denial of a former request to build on that property. The reason that nothing was built on that property was because at the Zoning Board hearing for a Special Exception there was so much opposition to the project that the applicant withdrew the application.

New Alternate

Mr. Don Sellarole was at the meeting to see what happens at a ZBA meeting. He was not discourage after spending the evening at the Town Hall and said he was still willing to be an alternate. Ms. Leclerc made a motion to approved Mr. Sellarole as an alternate. The motion was seconded by Mr. Vose and approved by the rest of the Board. The ZBA may have three alternates. Mr. Sellarole has to go to the Town Clerk and be sworn in.

Mr. Carroll on Taggard Road

Mr. Carroll has three pieces of abutting property on Taggard Road. He may get a Voluntary Merger from the Planning Board to erase the lot line between two pieces of land he owns and then use one of the lots for his residence and another lot for an accessory building, which he has already gutted, for an accessory building. He does not need a Public Hearing for a Voluntary Merger.

Respectfully submitted,
Marilou Blaine, Secretary

cc: WPB, ZBA, Town Offices, North Walpole Commissioners, Walpolean, www.walpolenh.us
Posted: Inside Town Offices, on the bulletin board outside Walpole Grocery.