

Zoning Board of Adjustment Minutes
Wednesday, July 20, 2022
Walpole Town Hall
7 pm

Present: Chair Jan Leclerc, Clerk Tom Murray, Pauline Barnes, Tom Winmill. Alternates Judy Trow, Don Sellarole and Dave Edkins. Also attending the meeting were Chris Carbone, John Pappas, Carolyn Vose, Joanna Andros and Myra Mansouri. Town Counsel Jeremy Hockensmith arrived at the meeting at about 7:30 pm.

Minutes: Written by Marilou Blaine. **This meeting was recorded. These minutes are unapproved and will be reviewed at the August 2022 meeting for corrections, and additions and/or omissions.**

Call to order: Ms. Leclerc called the meeting at 7 pm.

Minutes of June 2022 minutes: Ms. Trow made one correction. She said that as an alternate she was asked to fill in for absent board member Tom Winmill. Ms. Trow made a motion to approve the amended minutes of the June 15 meeting. Ms. Barnes seconded the motion and the motion carried.

Appointment of filling vacancies in membership of a new board member. Ms. Leclerc announced that Vice-Chair Ernie Vose had resigned and she was appointing Alternate Judy Trow to fill out his place on the board until the next election. According to RSA 673:12 1. "For an elected member, by appointment by the remaining board members until the next regular municipal election at which time a successor shall be elected to either fill the unexpired term or start a new term, as appropriate. Source. 1983, 447:1 eff. Jan 1, 1984." As it happens, Mr. Vose's term was going to be up in 2023. Mr. Winmill made a motion that Ms. Trow would serve as a board member until the next regular municipal election, which would be in March 2023. Ms. Barnes seconded the motion and the motion carried unanimously.

Old Business:

Public Hearings:

Expansion of a Non-Conforming Use: Elizabeth Roos, 14 Middle Street, Article V D-2, Tax Map 20, Lot 77, Residential B. Ms. Roos would like to change and enlarge her deck at the back of the house. The door to the deck is the second egress from the house. The door is even with the deck and gets frozen shut in the winter. The plan is to drop the deck down one step and make it 6 feet longer. Postponed.

Public Hearing: Expansion of a Non-Conforming Use: Chris Carbone, 65 Elm Street, Tax Map 19, Lot 31, Residential B. Article V D-2, setbacks. Mr. Carbone wants to replace a shed on his property that is a different shape and size.

Mr. Sellarole said he appreciated Mr. Carbone's display of the property. Other board members agreed and said that the display was large enough to be seen clearly by the board and that included the writing.

Mr. Carbone described and pointed out what was on the display - where there is a house, a garage, a garden, a fence and where the property drops off. He said the property is non-conforming.

Ms. Trow said the old shed is on the existing property line. Why not put it behind the garage? she asked. Mr. Carbone said there is a garden and a swing set behind the garage and it drops off sharply

because of a retaining wall.

Ms. Barnes read aloud from Chapter 2 of “The Basics Function of the NH Zoning Board of Adjustment.” It said allowable Expansions of Nonconforming Uses must meet the court-created tests.

The Board should look at:

- (1) The extent to which the proposed use reflects the nature and purpose of the prevailing nonconforming use. The proposal should be a “natural activity, closely related to the manner in which the piece of property [was] used” at the time the restriction was enacted; In other words, is it really the same use, simply “evolving” through new customs or technology?
- (2) Whether the proposed use is merely a different manner of utilizing the same use or constitutes a use different in character, nature and kind;
- (3) Whether the proposed change in use will have a substantially different effect on the neighborhood;
- (4) In the case of dimensional non conformities, whether the proposed change or expansion renders the property proportionally less adequate, in terms of the requirement to which the property doesn't conform.

[This 4th test, although not mentioned in the Hurley v. Hollis case (143 N.H. 567 (1999), was set out in New London Land Use Assn. v. New London ZBA, 130 N.H. 510, 516 (1988).]

Mr. Carbone wrote in his application that he owns the property with his wife Alejandra Pallais. “The address is 65 Elm Street, Map 19, Lot 31. It is a .28-acre lot on the east side of the street, south of the Town Common and has 60 feet of road frontage. His application says that there is an existing 8-foot-by-8-foot shed on the North side of the property line that is old and has a rotting foundation and siding. He would like to build a new 6-foot-by-16-foot shed to the west of the existing shed and then demolish the existing shed once the new shed is complete. Because the new shed will be 15 feet within the property line, setbacks are unable to be maintained. The lot was grandfathered as a non-conforming lot, so requiring the setbacks to be maintained would amount to a significant hardship. Both the new and existing sheds are small structures. Once the existing shed is removed there is only a new area increase of 32 square feet. The new shed does not create a nuisance or a hazard and it will improve conditions as it will not be in disrepair.”

Mr. Winmill had a couple of questions. Board members answered his questions. Ms. Leclerc said a shed is a normal use in a residential district. Ms. Trow said it is a little bit larger. Mr. Sellarole said it is 32 square feet larger. Mr. Winmill asked if abutters were notified. The answer was “of course. It's a public hearing.” Mr. Edkins said if abutters wanted to complain they could attend the meeting. Ms. Trow said the existing shed is in poor repair so it would actually be an improvement to the property and there would not be junk in the yard but be contained in a shed. Mr. Murray asked if it would be the same distance from the boundary. Mr. Carbon said actually a couple of feet more.

Ms. Trow made a motion that the board approve the Expansion of a Non-Conforming Use, tax map 31, lot 31 in residential B article V, D-2, setbacks, to replace a shed at 65 Elm St.. Mr. Murray seconded the motion and the motion carried.

Temporary Signage: John Pappas – Temporary Signage at Store-It, five storage units are in the process of being built behind Dollar General on Route 12, across from Pete's farm stand.

Mr. Pappas is building five storage units totaling 37,450 square feet on former Abenaki Springs property that is behind Dollar General on Route 12. He was at the meeting to ask for a temporary sign at or near that location until a permanent sign is installed after the units are built.

The sign would announce the opening of the storage units, which would be called Store-It of Walpole. The sign would say "Opening Soon!!! Store-It of Walpole, Climate & Non Climate controlled Self Storage, 1-800-352-5251 www.Storeitofwalpole.com." It is two sided, and made of material that's not permanent but like a banner. It would go on the vacant lot between the pump house and Dollar General on Route 12. He has notified the owner of Dollar General what he is doing. Jack Franks owns the property and he has given permission to put up the sign. Ms. Trow asked if this is where the permanent sign would be. Mr. Pappas said "no". The permanent sign would be on Store-It property and would be near the front portion of the storage units. The location was okay-ed at the Planning Board public hearing, he said.

He put up a drawing of the property survey and pointed to where the permanent sign will be at the corner of the property. It's actually on Red Barn Lane. He expects his permanent sign will up in September or October and he knows he has to come back to the Zoning Board for that sign.

Ms. Leclerc said that this sign doesn't fit our definition of a temporary sign. Last year the town approved a Temporary Sign ordinance. It says "A temporary sign is any sign not permanently attached to the ground, a wall or a building that is intended to be displayed for a short to limited amount of time. All temporary signs shall be removed with ten (10) days following the event or activity being promoted."

The sign would be 32 square feet, which is the size allowed by the zoning ordinance in the commercial district. Mr. Pappas said it would a banner placed on two posts on Route 12 between the pumping station and Dollar General. Ms. Leclerc said the sign ordinance says it has to be 60 from the edge of the traveled highway and 100 feet from another sign.

Ms. Trow made a motion that the board approve the so-called temporary sign, that it be 60 feet from the edge of the highway and 100 from another sign until November 1 and that it be totally removed, including the posts, when a new permanent sign is installed. The motion was seconded and approved by the entire board.

Nonpublic session

At 7:26 pm Ms. Leclerc said she would like to go into nonpublic session to meet with town counsel Jeremy Hockensmith. Ms. Trow made a motion to go into nonpublic session. The motion was seconded and approved by the rest of the board.

At 8:48 pm Ms. Trow made a motion to come out of executive session and to seal the minutes. The motion was seconded and approved by the board.

Appointment of two alternates

Ms. Leclerc announced that because of the upcoming public hearing for an appeal in September she was suggesting that the board approve two new alternates. Three board members and one alternate are planning on recusing themselves from hearing the appeal, she said. So she introduced Myra Mansouri and Carolyn Vose as potential alternates. Mr. Winmill objected to that idea saying that the board had no advanced notice of the announcement. It wasn't on the agenda, he said.

Mr. Winmill said that there was plenty of time before the hearing, which isn't until September, to consider candidates as alternates and it would give board members a chance to consider the suggestion and the nominations at the regular August meeting. He also was concerned that adding two more members for the purpose of a future hearing was not a good idea.

Mr. Murray said when he came onto the board he was as green as a turnip. Mr. Murray made a motion to appoint the two candidates as alternates tonight and next month announce the nomination of a third candidate. Ms. Trow seconded the motion.

Mr. Winmill objected and thought the board should wait 30 days and develop a list of candidates instead of railroading the candidates through tonight. There would be no harm in waiting until next month, Mr. Winmill said. Ms. Barnes didn't see any advantage to that idea, nor did Ms. Trow. Ms. Trow said that it is good to have both experienced and inexperienced people on the board. Board members without experience sometimes ask obvious questions that experienced people don't think of. A vote was taken on the motion and there were four ayes and one nay.

Applications

Three zoning board applications were discussed at the meeting: Variance, Expansion of a Non-Conforming Use and Appeal for Administrative Decision. Ms. Trow completed the application for a variance. Ms. Barnes had a couple of minor suggestions and it was suggested that on the abutter list page the word Applicant be placed permanently at the top of the list as most applicants don't consider themselves to be abutters. Ms. Trow will send a final draft to Ms. Leclerc and Ms. Leclerc will send it to Sarah Downing to be put on the website.

The draft made by Mr. Edkins is for The Walpole Clarion article on non-conforming uses and will

be postponed until September. The Board will look at the draft and report back at the next meeting about omissions or additions. The Board was also asked to look at an application for Appeal for Administrative Decision and also report back at the next meeting in August.

Zoning Maps

Mr. Peter Palmiotto sent two versions of a colorful zoning map to be displayed in the hallway of the Town Offices. One has the entire town on the right and the village district on the left. The other is a mirror of the first map. The Board thought the map with the entire town on the left was the better of the two maps.

Fact Finding

As of August 23 the Zoning Board must fill out a Town Notice of Decision for every decision made. Following are copies of the forms for Finding of Facts, Decisions Approved and Decisions Denied.

Adjournment

There being no other business Mr. Trow made a motion to adjourn. Ms. Barnes seconded the motion and the motion carried.

Meeting concluded at 9:30 pm.

Respectfully submitted,
Marilou Blaine
ZBA Secretary

cc: ZBA, WPB, Town Offices, The Walpolean.

Posted: Inside the Town Offices, on the bulletin board outside the Post Office.

Attachments are the following forms:

Finding of Facts
Decision Approved
Decision Denied

FINDINGS OF FACTS

Zoning Board of Adjustment, City/Town of _____
Hearing held at: _____ (date)
(time) (location) concerning a request by _____ (applicant's name) for
_____ (type of
appeal) concerning article _____ section _____ of the zoning
ordinance.

Applicant proposes to:

_____ on
the property located at _____ in the _____ zone.

- Summary of the facts of the case discussed at the above public hearing:
1. _____
 2. _____
 3. _____
 4. _____
 5. _____
 6. _____

_____ C-12

THE BOARD OF ADJUSTMENT IN NH 2021
– NH OPD NOTICE OF DECISION - GRANTED

Zoning Board of Adjustment, City/Town of _____ Case No:
_____ You are hereby notified that the appeal of _____ for
_____ a _____
regarding section _____ of the zoning ordinance
has been GRANTED, subject to the conditions listed below, by the affirmative vote of at least three
members of the Zoning Board of Adjustment.

- Conditions:
1. _____
 2. _____
 3. _____

_____ Chairperson, Zoning Board of Adjustment
_____ Date

This approval shall be valid if exercised within (insert 2 years or time frame as provided by local ordinance) from the date of final approval, and shall not expire within 6 months after the resolution of a planning application filed in reliance upon this decision, as per RSA 674:33, IV. Note: The selectmen, any party to the action, or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at (insert location where statutes can be reviewed). This notice has been placed on file and made available for public inspection in the records of the ZBA on (insert day and date). Copies of this notice have been distributed to the applicant, Planning Board, Board of Selectmen, Town Clerk, Property Tax Assessor, (insert any others as required by the board's rules of procedure) .

NOTICE OF DECISION – DENIED

Zoning Board of Adjustment, City/Town of _____ Case No:

_____ You are hereby notified that the appeal of

_____ for

a _____
regarding section _____ of the zoning ordinance has been
DENIED, for the reasons/facts listed below, by vote of the Zoning Board of Adjustment.

Reasons/Facts Supporting the Denial:

1. _____
2. _____
3. _____
4. _____
5. _____

_____ Chairperson, Zoning Board of Adjustment

_____ Date Note:

The selectmen, any party to the action, or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at (insert location where statutes can be reviewed). This notice has been placed on file and made available for public inspection in the records of the ZBA on (insert day and date) and has been published in the (insert newspaper name) on (insert day and date). Copies of this notice have been distributed to the applicant, Planning Board, Board of Selectmen, Town Clerk, Property Tax Assessor, (insert any others as required by the board's rules of procedure)