

Walpole Zoning Board of Adjustments Minutes
November 15, 2022
Town Hall
7 pm

Roll Call: Present: Chair Jan Galloway-Leclerc, Vice-Chair Judy Trow, Clerk Tom Murray, Pauline Barnes. Alternates: Don Sellarole, Carolyn Vose, Shane O’Keefe and Myra Mansouri. Absent: Board member Tom Winmill and alternate David Edkins. Alternate Ms. Vose was asked to sit in for the absent board member and she agreed.

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

Call to order: Ms. Leclerc called the meeting to order at 7:03 pm.

Minutes of October 2022:

Mr. O’Keefe referred to page 3 saying it did not include his last name in the third to to last paragraph. Also, at the end of the same paragraph it should say “Ms. Galloway-Leclerc said she would bring it up.” On the same page, fifth paragraph from the bottom, add “not” at the end of the second paragraph. It should read, “He thought worrying about someone’s computer getting hacked is not a reason to not get information.” Ms. Trow made a motion to approve the minutes as amended. Ms. Barnes seconded the motion and the motion carried.

Responses from the NH Municipal Association:

At the October 2022 meeting two questions came up and Chair Ms. Galloway-Leclerc said she would check with the NH Municipal Association.

The first question was “Is there a recommended way for board members to receive advice from the town attorney?” Our town attorney has requested that the ZBA communicate with him only through the chair, but one of the board members would like the attorney to email his concerns. However, this may make it more difficult to keep his advice confidential. Generally when the chair receives a response from the association, she brings the response to a regular meeting for discussion with the rest of the board.

Jonathan E. Cowal, Esq. emailed the chair, “In situations like this, our advice is always to defer to your town attorney. Whatever they think works best for them and the town is what should be followed.”

Question No. 2: Our ZBA recently heard an appeal that was somewhat controversial. Because there was concern that if the board wasn’t careful, it could end up in court, “I asked the town attorney to attend a meeting prior to the hearing and discuss with the board the rules surrounding who should recuse oneself. We did it in a nonpublic consultation with counsel.

“At our next meeting we entered a nonpublic session and discussed the advice we had received. We did not discuss the appeal. We discussed what we understood the attorney to have said regarding the general procedure of recusing oneself. For example, the rule that each member must make the decision for him/herself, but that perhaps some personal relationships might be considered too close and may be grounds for an appeal in certain situations. After we came out of nonpublic session we sealed the minutes.

“At this time the appeal before the board has been decided. When the time limit for appealing that decision has passed, will it be appropriate to unseal the minutes of the nonpublic session? One opinion is that because the matter discussed was advice given by counsel that the minutes be unsealed because they only pertain to discussion of procedure in a general manner with no reputations involved, and for purposes of transparency we should not keep them sealed. What is your advice?”

Mr. Cowal wrote “Unfortunately, I cannot answer this question for you. I can only point you to the law and the board will need to decide what they think is right for themselves. What I can tell you is that any actual discussions with your attorney would be protected by the attorney client privilege and would never need to be disclosed unless by a court order. However, minutes from the nonpublic session where the board simply discussed the attorney’s advice and the attorney was not present should be evaluated under RSA-A:3 III which states the criteria for unsealing minutes. The board should review that criteria and vote for what they think is appropriate.”

Unsealing minutes

The Zoning Board has several sealed minutes that are held by the chair and it was decided at the previous October meeting that some of them should be unsealed. Ms. Trow made a motion to go into nonpublic session. Ms. Barnes seconded the motion and the motion carried. The time was 7:20 pm. Ms. Trow made a motion to come out of nonpublic session at 7:40 pm for consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session. Ms. Barnes seconded the motion and the motion carried.

The purpose of the nonpublic session was to review the sealed minutes of two nonpublic meetings March 18, 2020 and August 17, 2022. A motion was made, seconded and approved unanimously by the board to unseal both of these nonpublic session minutes. These nonpublic minutes will now become part of the permanent record of minutes in the appropriate binders in the locked ZBA files.

Bylaws

At the October meeting the board decided it would be a good idea to review the ZBA bylaws. They planned to do it at the November meeting. The board would also look at the Suggested Rules of Procedure for Local Boards of Adjustment. So the board spent the next hour and 20 minutes going over the current Bylaws line by line. Ms. Barnes asked what’s the difference between Bylaws and Rules of Procedure and Ms. Galloway-Leclerc said she asked the Municipal Association that same question. She said they are the same thing. Attached is what the board is working on. It is a work in progress. The process will continue at the December meeting and there will be a vote on accepting or not accepting the new Bylaws.

At 9 pm Mr. Murray made a motion to adjourn the meeting. Ms. Trow seconded the motion and the motion carried.

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