

Walpole Zoning Board of Adjustment Minutes
Wednesday, May 17, 2023
Town Hall
7 pm

Roll Call: Present: Board members: Chair Jan Galloway-Leclerc, Vice-chair Dave Edkins, Clerk Tom Murray, Pauline Barnes. Alternates: Don Sellarole, Carolyn, Vose, Shane O’Keefe, Myra Mansouri. Absent: Board member Tom Winmill. Secretary Marilou Blaine. Also at the meeting were Trina Carmody, Bill Carmody, Kara Dexter and Peter Dexter.

Call to Order: Ms. Galloway-Leclerc called the meeting to order at 7:05 pm. Ms. Galloway-Leclerc asked Alternate Mr. O’Keefe to fill in for the absent board member. He agreed.

Minutes: Ms. Barnes made two corrections on page 2. In the third paragraph change “if” to “it” and in the third paragraph from the bottom “decide” to “decided.” Mr. O’Keefe recommended that the last sentence on page 2 of the second to last paragraph be stricken from the board’s draft minutes of the meeting of April 19, 2023 and replaced with the following sentence. “Mr. Winmill left the meeting at about 7:40 pm.” Ms. Leclerc corrected the date in the first paragraph of the section 186 Barnett Hill Road to April 17, 2023 and on page 2, fourth page it should read “Ms. Galloway-Leclerc said “it was on the agenda.” Finally, the statutory reason for going into nonpublic season was RSA 91-A:3 (c) “Matters which if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body itself.” Mr. Edkins made a motion to approve the amended minutes. Ms. Barnes seconded the motion and the motion carried.

Old Business:

Variance: William and Trina Carmody, 31 Pleasant St., Tax Map 20, Lot 25, Residential B district. Add a 6-foot-by-30-foot covered porch to the front of the house. Article V, D-2. Distance to the center of the road.

Mr. Carmody had a drawing on display that showed the porch. Board members also had a copy of the identical image. Mr. Carmody said the main reason for the porch was to help alleviate water coming into his basement. He said with the porch the snow will come off the roof six feet from his foundation. He is also putting in some drains on either side of the house to help with the situation. Mr. Murray asked what kind of roof. Mr. Carmody said he was thinking of a ribbed metal roof so instead of the snow sliding off the roof the ribbing would make it move more slowly. His house is 20 feet from the edge of the road and there’s another 18 feet to its center. He was asked to read the five criteria for a variance and his answers are in quotes.

He wrote:

1. Granting the variance would not be contrary to the public **interest** because:
“Adding a front porch to said property will not in any way affect or encroach upon abutters.”
2. If the variance were granted, the **spirit** of the ordinance would be observed because:
“The added porch will not affect road frontage or snow removal requirements of the town.”
3. Granting the variance would do substantial **justice** because:
“It will improve water drainage away from the home’s foundation, the most important aspect of the request.”
4. Granting the variance will not diminish the **values** of the surrounding properties because:
It will enhance the curb appeal of the house, thereby improving the values of abutting properties.

Unnecessary **Hardship:**

a. Owing to the special conditions of the property that distinguish it from the other properties in the area, denial of the variance would result in unnecessary hardship because:

“This house sits so close to the road center because of changes made by the town regarding the road many years ago.”

b. The proposed use is a reasonable one because:

“The added front porch will help solve a winter water issue, it won’t affect other properties and will improve the appearance of the house.”

There being no questions from the Board, Mr. Edkins made a motion to approve the variance as it has satisfied the five criteria as specified in the application. Before the motion was seconded Ms. Barnes suggested that because of the August 2022 legislative changes in zoning regulations that each of the criteria be addressed. Other Board members agreed. Ms Barnes said that Mr. Carmody met the five criteria. The porch would not alter the essential character of the neighborhood and it would not affect health and safety. It would do substantial justice addressing a drainage problem, without adversely affecting neighbors. Neighbors have not objected that the porch would diminish values. The hardship is that the property is uniquely pie-shaped and four feet below the road unlike neighboring properties that do not have this problem. Ms. Barnes now seconded Mr. Edkins’ motion.

Mr. O’Keefe asked if the motion should note that changes to the porch, such as it being enclosed or a second story added would need a variance. It was the consensus of the Board that just doing either of those things would automatically mean the applicant needed a variance. The Board voted on the motion to unanimously approve Mr. and Mrs. Carmody’s application for a variance.

Nonpublic Session minutes

A motion was made and seconded to go into nonpublic session. After a few minutes when members had read the one-page minute report Mr. Edkins made a motion to come out of nonpublic session. Mr. O’Keefe seconded the motion. There was no discussion of the minutes. Mr. Edkins made a motion to approve the minutes. Ms. Barnes seconded the motion and the motion carried. There was no motion to seal the minutes.

Discussion: Variance versus Expansion of a Non-Conforming Uses

Chair Galloway-Leclerc wrote an email to the New Hampshire Municipal Association (NHMA) explaining the situation of Mr. and Mrs. Carmody. (See above.) She wrote “There was debate among board members regarding whether he needed a variance or an expansion of a non-conforming use. The use - a home with a porch - is a conforming use in the residential district where the property lies. The non-conformity lies with the size of the lot and the setback of the house from the road and the property boundaries.”

Mr. Stephen Buckley’s reply was “I am not saying, nor did my prior email at all state, that the residential use is non-conforming. Rather, my email said the use is probably non-conforming to the dimensional requirements of your zoning ordinance. Yes, indeed, that is what I said and that is what I mean. A property that came into existence prior to zoning may be non-conforming as a use, but also non-conforming as to the dimension requirements of your zoning ordinance, such as lot size and setbacks.

“The job of the ZBA is to determine whether by placing the proposed porch further into the front yard setback does this constitute a substantially different use and therefore the proposed expansion would not be protected by the provisions of RSA 674:19.

“Whether any of your hypothetical situations occur in the future is not before you at this time. At this time the ZBA needs to determine whether the proposed front porch for a house is or is not a substantially changed use such that a variance is required before the porch can be built.”

The board discussion about this topic was “Should the ZBA be making these decisions?” Mr. Edkins asked. The Zoning Board is an appeals board. The Select Board or a Zoning Coordinator should be making these decisions, he continued.. Mr. O’Keefe suggested that many towns have a part-time Zoning Coordinator and share such a person with several towns. Maybe that could happen here in Walpole. It was decided that Ms. Galloway-Leclerc and Mr Edkins would go to a Select Board meeting and this topic would be presented.

Maps

Last year the ZBA had a colorful zoning map framed and now it is hanging in the Town Hall entry hall. Ms. Galloway-Leclerc asked Mr. Buckley “May we refer to the new map in the Ordinance by adding “amended” and the date without a vote of the town? If we may, should the date amended be the date the map was revised or the date that the town approved the changes to the zoning district?”

Mr. Buckley’s response was “This new and improved zoning map should refer to all of the dates map amendments were approved like the following: “approved by town meeting in 1966, and amended in 1972 and in (insert the years of the two additional amendments since 1972).” Since all zoning map changes were approved by town meeting, no further town meeting approvals would be necessary for the new and improved zoning map.”

Letter from Town Attorney

The letter from the Chair to Jeremy Hockensmith concerned a decision by the Board at the April 2023 meeting regarding permission given to a couple to put a mobile home on their property while they were making repairs to their fire-damaged house. See Ordinance IV, F-3. Since the repairs require a building permit and involve construction codes and code conditions from other service people, these are permits that are determined not by the ZBA but the Town Offices, Mr. Hockensmith wrote.

After a short discussion it was thought that the Town Offices should handle the whole question of approval and not involve the ZBA. Why should someone who had incurred a disaster at their home have to wait until he/she can attend a once-a-month ZBA meeting when much of the permitting process is handled already by the Town Offices? This will be added to the list of items to be discussed with the Select Board.

Town Web Site

The town has hired a new company to build a new town web site. While some of the ZBA applications on the site need corrections, Ms. Judy Trow has offered to update all the applications after the new town website is up and running.

Expired ruling

More than a year ago the board gave permission for a person to demolish a vacant home on his property. The home still stands. The ruling was due to his request for an extension of his original

request. This topic will also be brought up with the Select Board.

SWRPC

Ms. Galloway-Leclerc was told by a Select Board person that the ZBA could get assistance from the Southwest Regional Planning Commission to review its Walpole Ordinance document. She will inquire of the Select Board about the process for getting their help.

Adjournment

Mr. O'Keefe made a motion to adjourn. Mr. Edkins seconded the motion and the motion carried. The time was 8:30 pm.

These minutes are not approved but will be reviewed for corrections, omissions and additions at its regular June meeting.

Respectfully submitted,
Marilou Blaine
ZBA Secretary

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

Posted: Inside the Town Hall, on the bulletin board outside the Post Office, www.walpolenh.us