

**Walpole Zoning Board of Adjustment**  
**November 15, 2023**  
**Town Hall**  
**7 pm**

**Roll Call:** Present: Board members Chair Jan Galloway-Leclerc. Vice-Chair David Edkins, Clerk Tom Murray, Pauline Barnes, Tom Winmill. Alternates: Myra Mansouri, Don Sellarole, Shane O’Keefe and Carolyn Vose.

**Call to Order:** Ms. Galloway-Leclerc called the meeting to order at 7 pm. A full board was present so an alternate was not needed to fill in.

**Minutes:** Ms. Galloway-Leclerc asked about the minutes. Mr. Tom Winmill asked the Chair if Mr. Mark Stevens had been notified of the October meeting. She said no. Mr. Winmill then made a motion that said, “RESOLVED, that in as much as Mark Stevens was not given prior written notice to appear for the meeting the Zoning Board of Adjustment minutes of October 18, 2023 be amended to delete all discussion of “Marks Stevens Watkins Hill Road, removal of parents home” and replaced by the following: “A discussion of Mark Stevens, Watkins Hill Road, removal of parents home took place:” and further that the revised version be posted to the Town website, and further that the Zoning Board issue a formal written apology to Mr. Stevens for discussing his personal matters and disseminating the discussion publicly without his knowledge or consent.”

There being no second. Ms. Barnes made a motion to approve the minutes as amended. Mr. Murray seconded the motion and the motion carried.

Mr. Edkins said regarding the Stevens matter some of what was written in the minutes was not discussed at the meeting. The secretary said she was trying to give some background about the situation. Mr. O’Keefe said that when “I” is mentioned in the minutes, the term should instead be “the secretary.”

It was agreed that the minutes be revised to exclude the background material and be reviewed at the December meeting.

Later in the meeting Ms. Galloway-Leclerc said she had been to a Select Board meeting to discuss this matter and they said they would “handle it.”

**New Business:**

**Application for a Variance:** Walpole Foundation, 75 Westminster St. Map 20, Lot, 11, Residential B District. Mark Houghton will represent the Foundation. The Foundation will be requesting a public hearing in December

Mr. Mark Houghton was at the meeting to bring in a new application to the board. At this point Mr. Murray recused himself and went to sit in the audience. Ms. Galloway-Leclerc asked Ms. Mansouri to sit in his place on the board while Mr. Houghton explained the application. Mr. Houghton said that the Walpole Foundation had purchased the Walpole Village School and property. The school, which is a preschool, now pays The Walpole Foundation rent for its use of the building and since they have become tenants it has eased the strains on their financial obligations, Mr. Houghton said.

Mr. Houghton said this is a two-stage project. The first stage will be to build a new school. The second phase is to build housing for the elderly. Currently the school is on about five acres. The zoning

ordinance which the Foundation must follow for its variance is titled Article IX-1 Retirement Community Overlay District. Minimum ordinance requirements for this district say:

“C. APPLICABILITY: The Retirement Community Overlay District shall only apply to the Residential B and Commercial Districts.

“1. TRACT SIZE: A proposed site shall consist of at least ten (10) acres of contiguous land in single or consolidated ownership and may include parcels separated by existing public roads, provided that such parcels abut. The development shall be non-sudividable. Multiple lots shall be consolidated prior to approval under this ordinance.”

Mr. Houghton said this is a perfect fit and requested a public hearing in December.

Foundation board member Ms. Peggy Pschirrer said communities for senior housing and preschools have been happening all over the country because the combination of these two age groups have been shown to get along very well with one another.

Mr. Edkins asked if the variance is to permit this proposed project on the current property that is less than 10 acres. Mr. Houghton said yes. When asked about a road cut from Route 12, he said there would not be one and the road system would be within the proposed acreage.

Ms. Mansouri made a motion to hold a public hearing for the variance in December. Ms. Barnes seconded the motion and the motion carried.

**Application for a Special Exception: Erika Kasser, 10 Bookseller Road** wants to use her property and gardens as a venue for weddings, special events. Map 4, Lot 28, Rural/Agricultural District.

Ms. Kasser did not come to the meeting.

## **Old Business:**

### **Short-Term Rentals**

Latest decision of the NH Supreme Court. See attached.

<https://alfanolawoffice.com/a-landmark-decision-on-short-term-rentals-and-zoning/>

Ms. Barnes sent the above report on short-term rentals to the Chair and the Chair sent it to the Board. The decision is all about Zoning Ordinances and how towns define certain terms in their ordinances. The question for the Court was to decide whether “non-owner-occupied STRs are permitted in residential districts under the Town of Conway’s zoning ordinance.” It was a divided opinion but ultimately “the NH Supreme Court ruled in favor of the property owner, finding that non-owner occupied STRs fall within the definition of a “residential/dwelling unit” and are therefore permitted in the Town Of Conway’s residential zones.”

Ms. Barnes read from the Supreme Court decision and “the court acknowledged that until the legislative body addresses short term rentals, the courts will make decisions based on the language of the ordinances in effect, even if the results vary from one municipality to another.”

Ms. Barnes thought before the board considers writing an ordinance, the board should first examine our definitions . Mr. Edkins said this is not what the Zoning Board is supposed to be doing. Mr.

O’Keefe agreed. However, a couple of years ago when the discussion about STRs was discussed Ms. Galloway-Leclerc got the opinion of the NH Municipal Association. That letter, written by Stephen C. Buckley says, “I do not share the new alternate’s view that it is inappropriate for ZBA members to work on amendments to the zoning ordinance.” Later in the letter Mr. Buckley said “when a ZBA member helps draft or recommend zoning amendments she is not deciding a question in a judicial capacity, rather, she is acting in a legislative capacity to improve or revise the content of the zoning ordinance.”

The Conway zoning ordinance defines residential/dwelling unit as “a single unit providing complete independent living facilities for one or more persons living as a household, including provisions for living, sleeping, eating, cooking and sanitation.” So the central issue was around “living as a household.” The NH Supreme Court’s decision focused on that language - “living as a household” - on the residential activities taking place on the property rather than the identity of the occupants.

Ms. Barnes pointed out that not only is there not a definition in our ordinance for the word “dwelling,” but also definitions are spread throughout the entire ordinance. Another definition that is not in our ordinances, she said, is the word “transient.” You can’t define STRs without that word.

Ms. Mansouri said Walpole doesn’t have a problem. Yes, the town has out-of-towners come stay at local Airbnbs for three or four days for graduations, weddings, etc, but after three or four days they leave.

Ms. Barnes said that there seem to be two kinds of Airbnbs, those that are rented by owner-occupants and those that are bought solely as an investment. The concerns that other towns have seem to be about the latter. If the Supreme Court is so picky on a word such as “household”, we should be considering looking at all our definitions, she said.

Ms. Vose thought this was a good idea and said it would also help people who are filling out applications. It should help them make more sense of what looks, at first, like gobbledygook.

After more discussion Ms. Galloway-Leclerc suggested that the board start by looking over the definitions in our ordinance during the next month and coming back with some ideas of how and if we should proceed.

### **More motions**

Mr. Winmill made several more motions for the board to consider. None of the motions received a second from a board member, so none were voted upon. The motions were:

“RESOLVED, that all electronically publicly disseminated Board agenda noting for a public hearing a written application for consideration by the Board have attached to the agenda the written application.

“RESOLVED, that all publicly disseminated Board agenda items indicate the Board member or other person responsible for requesting that the item be put on the agenda and the zoning ordinance or other rule anticipated to be under discussion.

“That all written legal advice received by any member of the Zoning Board be forwarded to all other Board members within 24 hours after receipt by such Board member.

“That pursuant to RS 676:3, Issuance of Decision, the Board shall issue a final written decision,

using the templates of Notice of Decision and Finding of Facts on the Town website regarding the following:

“Approval of the Special Exception granted on August 26, 2023 for Dussault Property management LLC, Jessi Dussault to put three apartments in former Head Start School.

:Approval on May 27, 2023 of Mr. and Mrs. Carmody’s application for a variance.

“Approval of April 19, 2023 of the temporary mobile home at 186 Barnett Hill Road for a period not to exceed one year; and

“and further that each Notice of Decision and Finding of Facts be posted on the Town website for Zoning, effective immediately.”

Ms. Galloway-Leclerc told Mr. Winmill a Finding of Facts form had been completed for each of the following public hearings: Home Away From Home, Dussault Special Exception and Carmody variance. The couple needing assistance after the fire in the home did not have a public hearing.

Mr. Winmill wanted himself and the rest of the board to have copies of these documents. The secretary said they were in the files and she would get copies to the entire board in three days.

### **Gravel Pit Inspection forms returned**

Ms. Galloway-Leclerc and Mr. O’Keefe inspected the former Hodgkins gravel pit on Old Drewsville Road on October 31, 2023 and reported no problems.

Mr. Edkins and Ms. Mansouri inspected Tim Graves’ gravel pit on Wentworth Road on November 3, 2023. Mr. Edkins wrote on the form that “While gravel is still being excavated from the site, owner reports that this site is largely used for processing (crushing/screening) of material originating in an adjacent quarry located in the town of Westmoreland.”

The process is that the secretary now copies each inspection form and includes it in a letter to each gravel pit owner.

### **Adjournment**

Mr. Edkins made a motion to adjourn. Mr. Murray seconded the motion and the motion carried. The time was 8:15 pm.

These minutes are unapproved and will be reviewed at the December meeting for any omissions, additions or corrections.

Respectfully submitted,  
Marilou Blaine

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

Posted: Inside the Town Offices, on the bulletin board outside the Post Offices, [www.walpolenh.us](http://www.walpolenh.us)