

Walpole Zoning Board of Adjustment Minutes
December 20, 2023
Town Hall
7 pm

Present: Board members Vice-Chair Dave Edkins, Clerk Tom Murray, Pauline Barnes, Tom Winmill. Alternates: Don Sellarole, Myra Mansouri, Carolyn Vose, Shane O’Keefe.

There were also about 20 people from the public at the meeting, mostly abutters and board members of The Walpole Foundation.

Call to Order: Mr. Edkins called the meeting to order promptly at 7 pm.

Filling of Board Vacancies: Mr. Edkins said from now until election day in March there are only a couple of months to fill the vacancies of Chair and Vice-Chair. Two board members have to re-up for another three years at that time in March. The Board can either appoint people to fill those positions now or can choose an alternate to fill in for any position that is needed at the next two meetings before the election. Board members chose the latter suggestion - to fill any vacant position on the board at a future meeting with an alternate. Mr. Edkins asked Ms. Mansouri to fill in during the public hearing for Mr. Murray who recused himself because he is a board member of The Walpole Foundation and Carolyn Vose to sit in for the vacant position on the board. They both agreed.

Approval of Minutes: Mr. Murray made a motion to approve the October minutes as written. Mr. Winmill seconded the motion and the motion carried. Ms. Barnes made a motion to approve the November minutes as written. Mr. Murray seconded the motion and the motion carried.

Public Hearing:

Variance Application – The Walpole Foundation proposes at 75 Westminster Street, Map 20, Lot 11, Residential B District a Variance to the Zoning Ordinance Article IX-1. (Retirement Community Overlay District Section G.1. (Tract Size) to permit the replacement of an existing school building and the new construction of residential units for senior citizens, age 62. on a 4.084-acre parcel where 10 acres is required by ordinance.

Mr. Edkins opened the public hearing and said that The Foundation did not need a variance for the school because schools are permitted in the Residential B district. However, the addition of the housing for senior citizens did need a variance. His concern was the acreage because the Retirement Overlay District required 10 acres. He also thought The Foundation group should have gone to the Planning Board before coming to the Zoning Board of Adjustment.

Mr. Winmill agreed that The Foundation should have first gone to the Planning Board because Article IX-1 calls for a Conceptual Plan Review first. He also stated that the variance could damage the ordinance.

Ms. Peggy Pschirrer, a Foundation board member, said they were advised by Stephen Buckley of the New Hampshire Municipal Association to go the Zoning Board first to get a variance for the land. Ms. Pschirrer also said that by doing it this way Mr. Buckley said a variance does not affect Article IX-1, Retirement Community Overlay District. Article IX-1 will remain as is in the Walpole Ordinances.

Mr. Mark Houghton explained what The Foundation wanted to do. It is a long-range plan, he said. The preschool is located in the former Long River Garden building, formerly known for its Christmas wreath and table decorations, as well as operating as a florist shop. The building is old and the plan is to demolish it and build a new building that would house the school, have a community room so children could put on plays and have other activity and add a kitchen. The community room would also serve the senior community as a meeting room and there would be additional for faculty. Both the school and senior residents would pay rent to The Foundation.

Senior living space would include three duplex buildings and 2 separate stand-alone buildings. That would leave plenty of open space for both the school children and the seniors. The project would not have a cut to Route 12 but use Westminster Street. Regarding the size of the property he asked where in Residential A and B is there 10 acres available? There is a lot of fundraising to do as well as seeking out grants for both of these projects. The immediate focus is the school.

Mr. Winmill said that the Retirement Overlay District has a requirement of 10 acres as well as lots of other conditions for senior living. He discussed the article saying it requires a Homeowners Association that in turn required a lot of stipulations such as density, ownership of open space and common areas. He repeated that the ordinance states that the group should have started with the Planning Board. Ms. Pschirrer replied that this is not a Homeowners situation for a Retirement Overlay District. The land and buildings will belong to The Walpole Foundation and the organization will oversee its running.

Ms. Barnes said that she had looked up land requirements for elderly housing and found them in ten towns. This is what she found. Applewood in Walpole is on 1.9 acres; Chesterfield, Stratham and Dublin require 5 acres; Deerfield, Exeter and Merrimack require 3 acres; Derry and Hooksett require 2 acres; Danville requires 20 acres; and Kingston require 10 acres.

Mr. Edkins opened up the questioning for the project to the public. Abutter Chris Curven asked about the need for senior housing. He was wondering if The Foundation had done a particular study for this project. Ms. Pschirrer said all one had to do was to look at a newspaper. Every day there is an article about the need for housing for seniors, workforce housing and low-income housing. Ms. Barnes remarked that it is estimated that the state needed at least 40,000 more housing units just to accommodate the need right now. Mr. Curven then asked about the finances of the project and was told by the vice-chair that that would be a question at a Planning Board meeting.

Other abutters weighed in with questions but all said they were not against the project. Brenda Olsen had concerns about more traffic on Westminster Street, which she said was in terrible condition. She also mentioned pooling of water at the bottom of the hill after a

storm. Mr. Houghton acknowledged these were problems but problems that could be fixed and The Foundation was ready to help. Ms. Olsen said she thought there was already access in the local education system for preschoolers. Ms. Pschirrer said this was another option and this school took in children younger than the local school. Mr. Roos said he was around when someone else tried to put in a retirement community on this land. It was much more extensive and there were concerns about the use of slopes and the area near the ravine, he said. Abutters were offered a chance to buy the land if they weren't happy with the project, which they did. He was not against this project. Ms. Olsen asked about a timeline. Mr. Houghton said currently the hope is to break ground for a new school in the fall of 2024 and the senior housing in 2026.

While Mr. Edkins did a run-through with the public of what a variance requires, he said that a variance always go with the property. If it is sold and resold, the current owners and future have the benefit of that variance.

Following is The Walpole Foundation's application for the variance. The criteria is in bold, the applicant responses are in italic and the answers by board members are in regular type.

1. Granting the variance would not be contrary to the public interest because:

The Walpole Village School has existed at this location since 2006. It is currently in a building that was formerly part of a florist operation. Senior housing will in a small way meet the needs for handicapped accessibility for seniors that want to stay in Walpole.

Mr. Winmill said the answer is not relevant and violates the basic intentions of what is established in the ordinance.

Ms. Barnes said the New Hampshire Supreme Court says that the public interest/spirit of the ordinance criteria can be considered together. She read from the Purpose section of the Article and said that the variance meets those basic zoning objectives and is thus not contrary to the public interest.

Ms. Barnes said the NH Supreme Court said the public interest/spirit of the ordinance considered should determine whether the variance would unduly and in marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. Ms. Barnes said it is not contrary to the public interest.

2. If the variance were granted, the spirit of the ordinance would be observed because:

Residential B allows schools to be in this zone. A new energy-efficient building will enhance the spirit of the ordinance. Senior housing will strengthen the Walpole housing market.

Mr. Winmill said that strengthening of the Walpole housing market has nothing to do with the spirit of the ordinance.

Ms. Barnes again referred to the NH Supreme Court which said that the Court held in its 2011 Harborside decision that the way you determine if a variance violates basic zoning

objectives is whether it would alter the essential character of the neighborhood or whether it threatens public health, safety, or welfare. She said it does not pose a threat, nor does it alter the neighborhood, which will remain essentially the same as it was – a neighborhood that always had a preschool with a few more housing units.

3. Granting the variance would do substantial justice because:

A new, energy-efficient building with space designed for small children with a kitchen equipped with refrigeration and a stove will strengthen the school environment and do justice to the ordinance.

Mr. Winmill again suggested looking to the Overlay District requirements

Ms. Barnes remarked that the Supreme Court said “the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Will denial of the project be a gain to the general public? she asked.

4. Granting the variance will not diminish the values of the surrounding properties because:

A new school will enhance the surrounding properties as will senior housing, which will be compatible with the neighborhood.

Ms. Mansouri said she thinks it can benefit both children and seniors as there seems to be a rapport between the two generations. She fondly remembers that her grandmother lived around the corner from where she lived. It was a great comfort.

Ms. Barnes thought it created a positive synergy between preschoolers and seniors.

5. 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:

1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and specific application of the provision to the property because:

The size of the property distinguishes it generally from other properties in the zone. If the school cannot be rebuilt for efficiency, costs may make it impossible to carry on. The loss of a safe preschool will be a strain on the community.

and

the proposed use is a reasonable one because:

The school building is inefficient, costly to maintain and heat and lacks proper office space for faculty. Walpole lacks options for seniors who wish to stay in Walpole as they downsize from large houses.

b. Explain how, if the criteria in subparagraph (a) are not established so unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Adding handicapped accessible rental housing for Walpole senior will establish Walpole as a community who supports living in place. Both ends of the age spectrum will benefit from a new school and new houses.

Ms. Barnes said that for her the special condition of the land is that it has a school on it. Special conditions also apply to the built environment. She also said that the Court considers a use reasonable if it is a permitted use, and senior housing is a permitted use.

Mr. Edkins said that for him the special conditions that distinguish it from other properties in the area are that it is a much larger tract of land than others and that it does not have a residential purpose in an otherwise residential neighborhood

Mr. Edkins asked for a motion.

Mr. Winmill made a motion to deny the project. Since there was not a second to Mr. Winmill's motion, Mr. Edkins asked for another motion. Ms. Mansouri made a motion to approve the project. Ms. Barnes seconded the motion. After a short discussion she amended her motion to "as presented." The vote was four yeses and one no vote. Voting yes were Ms. Mansouri, Ms. Barnes, Mr. Murray and Mr. Edkins. Voting no was Mr. Winmill.

Short-term rentals

Writing an ordinance for short-term rentals came up at the November meeting.

Mr. Edkins said he didn't think the Zoning Board should be writing ordinances. He didn't think it was part of their job. It was the job of the Planning Board.

Ms. Barnes referenced a letter Ms. LeClerc obtained from Stephen C. Buckley of the NH Municipal Association in which he writes, "I do not share the new alternate's view that it is inappropriate for ZBA members to work on amendments to the zoning ordinance."

Ms. Mansouri also said in the past it had been her experience that the Planning Board was not at all helpful in putting together an ordinance.

While Ms. Barnes agreed that there needs to be a short-term rental ordinance, she said what is necessary is looking at our definitions in the ordinance. She read the definition of a dwelling. "Dwelling means a building of common foundation.. A one or two family dwelling will share the same foundation per lot."

Mr. Edkins suggested that an expert might be able to assist the board to help the ZBA out.

Town Report

Mr. Edkins said an end-of-the-year record of what happened on the ZBA is soon due for the Town

Report. In the past it has been written by the secretary. The secretary agreed to have a copy for the board at the next meeting. The report reviews what the ZBA has done in 2023.

Plaque

Mr. Winmill moved that the Board officially thank Ms. LeClerc for her service as Chair. There was unanimous agreement. Ms. Barnes read out words she had written in tribute to Ms. LeClerc: "I want to salute the depth of experience and knowledge that she brought to her role. I'd like to salute her professionalism, her integrity, her work ethic, her conscientiousness, and her sense of duty to the people of Walpole. She has been a true steward, a true public servant."

Ms. Vose suggested that the Board commission a plaque of thanks, a suggestion the Board welcomed. Mr Murray offered to take on the commission.

Re-ups

Tom Murray's and Pauline Barnes's terms are up this year. They must re-up with the Town Clerk in January if they want to remain on the Zoning Board. Also, there is a one-year position for the board to fill.

ZBA Budget

Mr. Edkins shared copies of the year-to-date ZBA budget with the board. He asked if the members had any comments. Ms. Vose suggested the Zoning Coordinator pay should come out of the Select Board's expenses. Mr. Edkins decided for this year the ZBA request would be level.

Adjournment

Ms. Vose made a motion to adjourn. Mr. O'Keefe seconded the motion and the motion carried. The time was 9:30 pm.

These minutes are unapproved and will be reviewed next month for corrections, additions and omissions.

Respectfully submitted,
Marilou Blaine
ZBA Secretary

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

Posted: Inside Town Offices, on bulletin board outside Post Offices, www.walpolenh.us