

**Zoning Board of Adjustment
Town of Walpole
Wednesday, March 21, 2018
7:30 pm**

Present: Board Members: Chair Myra Mansouri, Vice-Chair Jan Galloway Leclerc, Judy Trow, Tom Murray, Pauline Barnes. Alternates: Ernie Vose. Absent: Bob Anderson.

Recording: Marilou Blaine. These minutes are unapproved and will be reviewed at the April 2018 meeting for corrections, additions and/or omissions.

Roll Call: Ms. Mansouri called the meeting to order at 7:30 pm.

Minutes: Minutes of February 2018 meeting. Corrections: Ms. Trow made a motion to accept the minutes as presented. Ms. Leclerc seconded the motion and the motion carried.

Election of Officers: Ms. Trow nominated Ms. Mansouri as chairman. Ms. Leclerc seconded the motion and the motion carried. Ms. Trow nominated Ms. Leclerc as vice-chair. The motion was seconded by Mr. Murray and the motion carried.

Old Business:

Great River Co-op, formally known as Great River Consumer Cooperative Society, Inc. – the organization wants to convert a chicken coop, previously used by Hubbard, on Bensonwood property in the rural/ag zone for a store for the Co-op. Request for a Special Exception, Map 12 Lot 4-2, building 18 and Map 12, Lot 4-3 for the parking lot.

President Kim Mastrianni represented the Co-op.

Three Board members recused themselves because they are members: Ms. Leclerc, Ms. Trow and Mr. Vose. The remaining three Board members was enough for a quorum.

Ms. Mansouri asked Ms. Mastrianni to read the Co-op's proposal for the project and her answers regarding the criteria for getting a Special Exception needed for a commercial venture in a rural/ag zone. The criteria are:

C. Special Exceptions

Industrial, manufacturing and commercial operations by Special Exception from the Board of Adjustment when fulfilling the following requirements:

Consideration of Planning Board recommendation on the project based on its determination following a public hearing, that:

1. Property currently zoned for industrial, manufacturing and commercial operations is either unavailable or inadequate for the proposed use; and the proposed use is appropriate and consistent with the Town's Master Plan.
2. Each proposed use must show that it will not infringe on the primary established use of the district.
3. No industrial, manufacturing or commercial venture or use shall be permitted which could cause any undue hazard to health, safety or property values or which could be offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odor, smoke, or other similar reason.
4. Each proposed use shall provide adequate off-street parking, including loading facilities for freight

and delivery trucks, and parking spaces for employers, employees and customer vehicles. Additional parking may be required based on the size and nature of the business.

5. Businesses shall be located at least 65' from the center line of any right of way and not less than 20' from each side or boundary. Greater distances for setbacks and boundaries may be required according to the nature of the business.

All signs shall meet the requirements of Part D of the General Provisions of the Zoning Ordinance.

No retail commercial building shall be permitted which exceeds 40,000 square feet in gross floor area.

Ms. Mastrianni said the proposal requires a Special Exception from the Zoning Board in that we are proposing a commercial enterprise in a Rural/Agricultural district.

The Great River Co-op is a community-owned entity with over 750 members owners in the Great Falls Region. It exists to promote community, environmental, physical and social well-being within the region. We do that, in large part, through connecting our member owners and the greater community to our local farmers and producers and promoting local agricultural production by giving area growers a year-round retail market. We hope that the Board will find this enterprise fits within the spirit of a Rural/Agricultural zone and grant our exception.

Ms. Mastrianni's criteria are:

Criterion #1: a) We have reviewed several other options for developing the Great River Co-op. Based on a combination of location, space, accessibility, cost to develop, partner support, and availability, this existing structure has been selected as the best potential site for the store.

Criterion #2: b) The primary purpose for the Rural/Agricultural district is to provide ample area for pursuit of agriculture. The Co-op's vision is that all people in our region have access to locally grown, locally produced foods and strong community-based connections. It is our intent to provide a year-round market that can connect the community to our local producers, feature one local growers where possible and help them engage with the community. As such, the Co-op would be facilitating local producers in the pursuit of agriculture and, as a commercial operation, be in line with the purpose of the Rural/Agricultural District.

Criterion #3: c) As a food store, it is not in our best interest, not our intention to cause undue hazards to health, unsanitary conditions, noxious odors, smoke, etc. While we hope and expect good patronage of the store, we do not anticipate the resulting noise, vibration or traffic to be excessive as a result.

Criterion #4: d) The building allows for access by delivery trucks. Adequate parking space would be available to the west of the building or by possibly using a portion of Map 12, Lot 4-3.

Criterion #5: e) The existing building and any potential expansion is in excess of 20 feet from the lot boundary. Edward's Lane currently ends prior to the site.

f) Signage will meet the requirements of the town.

g) The existing building is – 4,680 square feet. The store plans for space between 4,000 and 6,000 square feet.

Ms. Mastrianni had a letter from Bensonwood granting the Co-op the feasibility of converting Building 18, a former chicken coop to a food co-op. Bensonwood owns both lots where both the store and parking lot will be.

Ms. Joanna Andros asked, What percentage of the actual use of the building will be local produce as opposed to canned and packed products, cooked foods? You are justifying this Exception in a rural agricultural area on the basis that you're providing healthy food locally produced food. For example, when I go to the Co-op in Keene, the produce section is a relatively small part of the store compared to the rest of it. Is your co-op going to specialize in just produce?

Ms. Mastrianni said "no." We said we are supporting all our local producers and some of those are farmers. There will be locally produced canned goods and cooked food and there will be some packaged products. The Co-op will be supporting local agriculture and supporting the local farmers and creating connections between them and the community. One of these is to host the farmers market.

Andros' second question is why a special exception when there is close to that space a lot that is in a commercial zone. Why give up land, which is in the Master Plan, that agricultural land should be retained as much as possible. Even if no one is farming right there now, it is some of the most fertile agricultural land in the state of New Hampshire. The other side to that is no one is farming it right now, but the other side to that is it available if someone wants to farm it. The Master Plan calls for saving that land as long as there is no need to use it. It just convenient for the Co-op members.

Mr. Ray Boas had a statement that he wanted inserted into the minutes. Here it is:
"Coming before the Zoning Board of Adjustment are two applications for special exceptions to utilize zoned Rural/Agricultural Land for commercial purposes. Approval of either application will irrevocably change the fabric of what is Walpole. There are specific criteria for granting a land use exception by the Zoning Board, and all must be satisfied. Neither the application to place the Great River Co-Op on Rural Agricultural Land nor the proposal to construct a gas station/convenience store on Rural Agricultural Land at the south entrance to the village satisfy all criteria.

"Walpole's Master Plan is an 114 page document providing guidance to Walpole's Planning Board. The General Goal is "To enrich the lives of Town residents by striving to improve the aesthetic quality and visual impact of the man-made environment..." Specific objectives are designed to "Preserve the character and quality of residential and rural areas ..." in Walpole, and to "preserve and enhance the classic New England character..." Section 5 of the Plan states "Agriculture continues to play a significant role in Walpole's pattern of land use ... it also plays an important role in the identity of the Town - visually and culturally. Walpole would not be Walpole without the presence of farms and farmlands."

"The purpose of Walpole's Zoning Ordinance is "to fulfill the goals and objectives as set forth in the Town Master Plan;" namely, "to guide the character of development." The Ordinance allows for some flexibility, but only under certain rigid criteria. An exception to utilize land zoned Rural/Agricultural for other than that use may be granted if "property currently zoned for industrial, manufacturing and commercial operations is either unavailable or inadequate for the proposed use." Statutory and case law has established five criteria to be met before a variance from the terms of a zoning ordinance may be granted. These criteria include: 1) denial would result in unnecessary hardship; 2) no diminution in value of surrounding properties would occur; 3) the proposed use would not be contrary to the spirit of the ordinance; 4) granting the variance would benefit the public; and 5) granting the variance would do substantial justice. Preliminary discussions indicate properties with a view of the proposed

convenience store/gas station will be diminished. Further, by their own admission in their application, the applicant, D&C Transportation has stated, "Other commercial and industrial sites listed contain "existing buildings, or did not meet the listed criteria, or were far too expensive." It is not the Zoning Board's, nor Walpole's residents, problem that the other available land was too expensive for D&C's project.

"Likewise, Great River Co-Op, has other land it can use. In fact, the original plan was to locate down in the flats on Route 12, and most recently to build sandwiched between the Hungry Diner and Pinnacle View. That plan was approved. I understand the Co-Op board's rationale to request an exception to use an existing building instead of building new, to save on costs and open sooner; but, that does not provide justification or qualify for a zoning exception., By their own previous plans, appropriate land is available, and was going to be used.

"Allowing any use of Rural Agricultural Land for other than its intended use will set a precedent to forever change the corridor through Walpole. Walpoleans have wisely set aside land for commercial development, and that is sufficient. We are all custodians of what is Walpole, and with that comes the responsibility to be attentive stewards to preserve the land, its visual impact, and our heritage. Walpole's Master Plan is just that, a plan. It is up to us to see its vision through."

Ms. Mansouri said that one thing has nothing to do with the other. Each Special Exception is decided on its own merits.

Eric Merklein asked if this building is converted into a Co-op and the Co-op goes bankrupt, does this land stay commercial forever. "Yes," said Ms. Mansouri.

He then asked about criterion No. C parking lot. There is no parking lot. The farmland will have to be dug up to make a parking lot. Ms. Mastrianni said yes. Mr. Merklein added that means more ag land disappears. He continued that during the summer the community has an abundance of local food to choose from - Pete's Stand, Hubbard's, Harlow's. Allen Bros. quit selling to stores because of all the regulations that a store has for selling their produce.

The town already has a local farming situation that is super. "I can't understand why we have to give up ag land when we already have local. If something happened, and the Co-op couldn't make a go of it, the town is stuck with a commercial lot and any commercial enterprise could go in there," Merklein said.

Finally, he mentioned the farmers market that used to be held on the Town Common. "Nobody showed up," Merklein said. He add that for about six months out of the year, you'll be importing food from elsewhere. "You will be supporting the local farmers, but not that much."

Ms. Mastrianni said farmers markets and co-ops are doing great. The one in Putney is doing well as is the one up north. The Brattleboro Co-op is doing great. So as far supporting the local farmers, if there's a Co-op, they know that they have a pathway to selling their products.

Mr. Merklein asked if the Co-op had to get a recommendation from the Planning Board. Ms. Mansouri said "yes." He then asked if the Board makes a decision tonight or does it wait for their recommendation?

Ms. Mansouri said it depends on what the Board decides tonight. It will be discussed.

Mr. Steve Dalessio said generally in the rural/ag district, we shouldn't be giving up agricultural land. But the day those buildings were put, the purpose was for agricultural reasons. Leaving aside the parking lot, the other thing is the Co-op is using existing buildings. In the future those building will deteriorate and over time there will be nothing back there. It's not like giving up land for a Jiffy Mart where the town lost an acre of land that's not prime farmland.

Ms. Andros interrupted and asked, "How do we know it's not prime farmland?"

Mr. Dalessio said, "That land hasn't been farmed for a long time." Ms. Andros said just because it hasn't been farmed doesn't mean it isn't prime farm land. It could be farmed.

Ms. Mansouri asked about the size of the parking lot on Lot 4-3. Mr. Dalessio said it's about 25 acres. Ms. Mansouri asked how much land will you need for a parking lot. Ms. Mastrianni said she didn't know and it would be what is required according to the size of our store.

Ms. Megan Hughes asked a question about exceptions. Once you start granting Exceptions, does it set a precedent for other people to apply for Special Exceptions? If you grant an Exception for this person, the next person coming along can ask "why can't I get an Exception. Is there a potential for a domino affect?"

We judge each case on its own merit as presented, Ms. Mastrianni said..

Mr. Boas raised the question if it had been considered to jack up the building and move it forward. "You could end up with a better situation and more visibility and maybe with a basement." Ms. Mastrianni said no. He continued that it might make more sense from a marketing perspective and visibility and it was done all the time in the 19th century. It's a win-win situation.

Ms. Mastrianni said she was open to whatever our owners might want and it depends on the outcome of these meetings.

Ms. Andros said she's had been reading the Master Plan. "There's a whole section on land use. When the Master Plan was developed a number of surveys were done. What was striking to her was that people could rate the importance of various features in Walpole. For example, rural agricultural setting, very important; small town atmosphere, very important; natural habitat, working farms, land available for farming, all very important." It seems this was Master Plan was done with trying to foresee what could happen and what was valued by the community.

That part of Route 12 is a corridor where commercial land is available.

Tom Murray asked where the sign would be. There is already a large sign for the Co-op near Route 12, Ms. Mastrianni said. The Co-op would be using that and also put one on the building.

How many cars are going to be there? he asked. Ms. Mastrianni didn't know but was going to do a market study.

The Hungry Diner has a gravel parking lot. It is paved as you come off of Route 12. Are you planning on paved or gravel? Mr. Murray asked. Ms. Mastrianni said it depends on what the town prefers and what was best for the area. The plan would meet whatever the town requirements are. "We're flexible."

There are already paved drives there for the trucks, she said, and they were pretty close to what was needed for truck access and a turn around. There would be paved access and double lots for handicap parking.

Mr. Murray said he highlighted a couple of things. One was that you would be using an existing site. And also it aligns with what the land was intended for because it has to do with agriculture.

Ms. Barnes asked about procedure. Doesn't the parking have to be "fleshed out?" she asked. The criterion asks for a lot more than has been presented. The criterion she was referring to is: "Each proposed use shall provide adequate off-street parking, including loading facilities for freight and delivery trucks, and parking spaces for employers, employees and customer vehicles. Additional parking may be required based on the size and nature of the business."

When you present an application, how detailed does the information have to be? Ms. Barnes asked. Ms. Mansouri said she thought it could be more detailed than it was.

Can the Board put restrictions on Special Exceptions someone from the audience asked. Ms. Mansouri said, "It can."

Ms. Leclerc said, If a Special Exception were approved for a Co-op, no other use could go there. If someone wanted something else there, it would need a variance.

Mr. Merklein said, "But it would be commercial." Ms. Leclerc explained that the lot would be rural agricultural with a Special Exception for a commercial use. If the building is improved, it's a special exception only for a Co-op use. Ms. Mansouri said, "If someone wanted come back and ask for something, they could."

Ms. Mastrianni speculated that if the Co-op goes in there and it fails, the building is not commercial. It's getting a special exception for that structure. Ms. Mansouri said, "yes."

Mr. Vose said, "They are not building another building back there." And the area is not being intensely farmed. Someone cuts hay there and that's about it.

Ms. Mansouri said the Board must consider a recommendation from the Planning Board, which they do not have yet. Her suggestion was to have a continuance until the Board hears what the Planning Board has to say. Ms. Barnes said she felt uncomfortable not following procedure.

Ms. Mastrianni said that when she started this procedure, she was told she had to come before the Zoning Board first. That was in accordance with the flow chart. She went before the Zoning Board first and requested a Public Hearing and then was told to go to the Planning Board and get a recommendation and then come back here for the Public Hearing.

When she went to the Planning Board she was told they could not make a recommendation without a Public Hearing and she was supposed to come to them first. So we have now requested a Public Hearing from the Planning Board for April 10. That Co-op Board expected by then there would be some decision made here this evening. Any decision here would be subject to the Planning Board making its recommendation. Ms. Mastrianni said she couldn't make the Planning Board meeting for April 18 because the Co-op was having its annual meeting on that date.

Mr. Boas said unfortunately this is all very, very confusing but it's clear that exception 1-a requires a recommendation by the Planning Board following a Public Hearing, which means that the Planning Board has to come first. It's too bad that the annual meeting is on the same date.

Ms. Mansouri asked the Board for a proposal. Ms. Barnes said, she was sorry about the annual meeting but she agreed with a continuance. "Our procedures are very clear and I don't think we can make a decision on something that hasn't happened yet. So I would make go with the continuance."

Mr. Murray, looking at the Matrix asked, Why did the meeting happen here tonight?

Because I was told we had to come here first, Ms. Mastrianni replied. Ms. Mansouri apologized for the mix-up.

Mr. Murray made a motion to have a continuance and await the recommendation of the Planning Board. Ms. Barnes seconded the motion. Ms. Mansouri also voted aye.

Ms. Mastrianni wanted a clarification of what was going to happen next time and if it included the parking lot. Ms. Mansouri said it would include the parking lot and abutters of 4-3 needed to be notified. The public may still ask questions or make comments at the next meeting.

New Business: Request for a Public Hearing - Expansion of a Non-Conforming Use at the Walpole Village Store LLC, 10 Westminster Street. Addition of handicap ramp. Raynie Laware represented Walpole Village Store LLC.

The Walpole Village Store is being renovated. Ms. Laware said that the new rules require a handicap ramp. The ramp will be on the east near the porch. She requested a Public Hearing for April, paid her fees and submitted an abutter list. Ms. Trow made a motion that the Board accept the application as presented and set a Public Hearing for next month, April 18 at 7:30 pm. Ms. Leclerc seconded the motion. The motion carried.

Ms. Mansouri wanted to know what was there before the door was added. Ms. Laware said it was a window. Ms. Mansouri asked about parking spaces. Ms. Laware said there would be no loss of parking spaces.

New Business: Signage for Joanie Joan's Bakery on Westminster Street. Ms. Joan Ireland asked for approval of a sign to replace the one that was formerly at Tom Murray's Restaurant. The sign is free-standing, double-sided 25½ inches wide by 33 inches high. It will be on the existing bracket. It says Joanie Joan's Eatery & Baked Goods. It is exactly the same size as the previous one.

The sign meets the requirements of the Zoning Ordinance so it was accepted. Ms. Ireland was asked to take a picture of the sign after it was put and leave a copy at the Town Offices for the secretary to be put in her file.

Update: Carmody land – Board members received:

- A copy of the original map of Dearborn Circle. It included to the two lots owned by William Carmody.

- A copy of a letter from the Selectboard to the Planning Board regarding this matter.

- A copy of a request by Randy Daniels and answer from Avitar for an abatement in 2004.

- A copy of the 2007 warrant article to change the Dearborn Circle and Burrows Lane property from Commercial to Residential (the warrant passed).

- A copy of the listing in the ordinance in the Zoning Ordinance booklet.

It was determined that the listing in the Zoning ordinance of the decision of the 2007 warrant article is incorrect and a warrant article needed to be on the 2019 warrant to correct the matter. The Zoning Board will write one and submit it to the Planning Board latter this year.

Update: Last year the Board spent a great deal of time coming up with a Matrix to make it easier to follow the path for a Special Exception. It states that the first step is to go to the Zoning Board. However, it was discovered that when it comes to a Special Exception to change a rural agricultural lot into a commercial use, the Matrix didn't work. In the past most Special Exceptions have been about putting up a sign in a commercial zone that is less than 100 feet from another sign. That does not require a recommendation from the Planning Board.

Ms. Trow said looking through the zoning ordinance that there were other districts that required input from the Planning Board. For example, Ms. Trow pointed out, in Residential Districts, conversions of existing larger home to multi-family dwellings may be allowed by Special Exception after the property has received Site Plan approval from the Planning Board.

So, it was determined that the Matrix would be set up to address the Special Exceptions in each district. Ms. Trow will work on this.

Map – Avitar created a colorful map pointing out each district. The Zoning Board was asked to match these districts with the information in the Zoning Ordinance. Ms. Trow said that couldn't be done with this map because there are no names of streets or rivers on the map.

A typical listing would be - "Boundaries of Residential District, Type A.

1. 250 feet back from edge of highway on either side of Hitchcock Road, from the Commercial District on the north and from the Residential, Type B, on the south to 2,000 feet east of intersection of Whitney (Old Cheshire Turnpike) and Alstead (Whitcomb) Roads." The map will be returned to the Town Offices.

Minutes of last month's Executive Session: Ms. Trow made a motion to go into Executive Session. The motion was seconded by Ms. Leclerc and approved by the rest of the Board. Last month's minutes of Executive Session were passed out. Ms. Trow made a motion to approve the minutes as presented and seal them. This motion was seconded and passed by the Board.

Ms. Trow made a motion to adjourn the meeting. Ms. Barnes seconded the motion and it was approved by the Board.

Respectfully submitted,
Marilou Blaine

Handouts:

Planning and zoning conference
Master Plan – Part 5
Plan for handicap ramp for Walpole Tavern
Info for Carmody

Next meeting Wednesday, April 18, 2018