

**Zoning Board of Adjustment
Town of Walpole
Wednesday, June 20, 2018
7:30 pm**

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

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

Roll Call: Ms. Mansouri called the meeting to order at 7:30 pm. All five Board members were present so an alternate was not needed to fill in.

Minutes: Pauline Barnes made a couple of typo and tense corrections: page 3 “where” to “here” and add “it” after the word chart in third to last paragraph; page 4 add word “to” in fourth paragraph, change “wanting to “want;” and page 5 “mention” to “mentioned” and “approved” to approve.” Ms. Troy made a motion to accept the minutes as corrected. Ms. Leclerc seconded the motion. The Board approved the motion.

New Business:

Ted Johnson – shed on School Street – cannot meet setback ordinance.

Mr. Johnson received a letter from the Selectman saying “that it came to their attention that a structure is being built at the rear of your home and you do not have a building permit.” Also, “it was noted that the new structure is very close to your lot line with your neighbor abutting to the north. Per the building permit instructions there is a setback requirement of 20 feet to any side or rear property line in order to be approved to build in an area that does not meet the setback requirement a property owner must seek a waiver from the Zoning Board of Adjustment.”

Mr. Johnson said he and his wife Colleen Canedy lived at 25 School St. and have lived there since 1991. He also introduced his neighbors to the north, Robert and Doris Bridge. Bill and Dutchie Perron are his neighbors to the south.

He explained that he has partially built a 10-foot-by-12-foot garden shed and he hoped that it would be approved at the meeting. Mr. Johnson continued saying that he and his neighbors have done a lot to make their properties very pretty. His wife is looking to have a garden and he likes to build stuff. So he went to his neighbors and asked their permission to build a garden shed and they gave him permission. He brought in a signed letter by his neighbors to the south and north that allow him to do that and added, in the letter, if they don’t like what he builds, he will take the shed down.

The shed is not going to have a foundation, no electricity and no water, Mr. Johnson said. He also brought in an image of his property from Google Earth showing that the lot was narrow. The shed will be in the direct line of the house.

Ms. Mansouri said this happens with in-town lots. All the lots in town are non-conforming as of today’s zoning ordinances. You are supposed to have 20-foot setbacks and be 65 feet from the road. But since that can’t be done, you need to have a hearing, fill out the paperwork and notify the neighbors formally.

Ms. Leclerc said the Board will need a drawing of your lot, distance from the property lines etc. You will also need a variance and there are five criteria. For example, why you have a hardship or why you can’t follow the ordinance.

Mr. Johnson said it's not really the hardship, it's the aesthetics. What if this shed is going to be mobile? he asked. Ms. Leclerc said that would okay. Mr. Vose asked, since the house is nonconforming, shouldn't he need a form for an Expansion of a Non-Conforming use.

Ms. Leclerc said if you were putting an addition onto a house you would need a form for an Expansion of a Non-Conforming Use. But this is a stand-alone building. It's a new structure.

Ms. Barnes read the pertinent reason for a non-conforming use in this situation:

D. A non-conforming use may be expanded or enlarged or changed to another non-conforming use after the Board of Adjustment determines, after public hearing, that the proposed expansion, enlargement, or change will not materially increase the hazard or nuisance value of the non-conformity.

Mr. Vose said the hardship is that the lot is too narrow. "We've done this many, many times," he said.

Ms. Canedy asked if the problem would be the same if you bought one of those little sheds. The answer was yes.

Mr. Johnson said he'd like to protect what he has invested in so far and asked if he could put up a couple of rafters and put on a roof. The Board agreed he could. He apologized for going ahead without ZBA permission.

Ms. Trow made a motion to have a hearing for the July meeting and Mr. Murray seconded the motion. The motion carried.

Walpole Co-op – Farmers Market on Route 12 – No one from the Walpole River Co-op came to the meeting.

Mr. Vose said that Pinnacleview owns the lots behind and to the north of their building. There are four lots. Chamberlain received a Special Exception to build. Bensonwood was approved for a building but purchased one in Keene instead.

Old Business:

Mr. William Carmody, who owns two lots on Ames Plaza Lane, came to the meeting to discuss the ongoing problem of the zoning district of his property. He brought in a 1991 map showing that the lots were commercial. He had gotten it the day before from the Registry of Deeds in Keene.

In 2007, a warrant article was approved by townspeople to change the Dearborn Circle subdivision to Residential B and his lots were originally part of the Dearborn Circle subdivision. But the warrant article never mentioned the numbers of the lots to be included. Later an addition to the Zoning Ordinances was added that describe the lots affected by the Dearborn Circle warrant article and his two lots were not included in the ordinance. Mr. Carmody said he calls this "the Carmody problem."

Ms. Mansouri said she totally understands his frustration. In 2007 there was a warrant article. It came through the Planning Board, was put on the ballot and there was a town vote. Prior to that the lots were commercial. The warrant article requested that the lots be Residential B.

Mr. Carmody said he needed documentation that it is Residential B. All the documents he has shows it is commercial. He went to the registry and got the map and even though a warrant article passed in 2007, it says his lots are still commercial.

The warrant is the problem because it says Dearborn Circle and Mr. Carmody's lots were originally part of Dearborn Circle. That's what the ZBA is trying to correct, Ms. Mansouri said. She has been in touch with town attorney and given him all the documents and asked how this problem could be corrected.

Mr. Vose said, “This is wrong. The map Mr. Carmody brought to the meeting is a legal document.” He asked why the Board couldn’t just change it.

Ms. Mansouri said you can’t just change ordinances without the vote of the town. Mr. Carmody showed his building permit for a commercial lot. Ms. Leclerc said that at the time Mr. Carmody got permission to have a soda labeling business in the house on the corner of Ames Plaza Lane and Upper Walpole Road, the Board thought the lots were commercial.

Ms. Mansouri said she will continue to contact the town attorney and get an answer from him and the ZBA will find out what the Board can do to rectify the situation. Ms. Mansouri said she wanted to follow through with this so it will be legal and done properly.

Ms. Barnes had a copy of a letter the Selectmen had signed that reviewed the Carmody documentation in March of 2018. It included reference to the 2007 Warrant Article regarding the change in zoning for the Dearborn Circle subdivision and other correspondence related to map and Carmody’s lots.

The letter says, “Therefore, map and lot 012-055-021 and the adjoining map and lot 012-055-005 are within the Residential B zoning district. The zoning notation on the tax card for map and lot 012-055-21 has been updated to reflect this decision. If a change in the zoning district for these lots (is to be done), a warrant article would need to be created for the 2019 annual Town Meeting. An approval by the Town would be required (to) change the zoning for these parcels.”

The warrant article was written poorly, Ms. Leclerc said. The town voted on the poorly written article.

Are the lots recorded in 1991 the legal map? Did the Registry of Deeds ever received the change of district based on the warrant article? Ms. Leclerc said the town tax map shows it as Residential B.

Later Ms. Leclerc said, “It’s too bad. The whole thing is too bad. None of the people did anything wrong.”

It was then discussed where or not Mr. Carmody could come in for a Variance to solve the problem but the Board wants to hear from the town attorney.

2018 warrant article. Ms. Mansouri continued that the warrant article voted on last year regarding zoning is illegal and should be repealed. She has sent information about that article to the town attorney to get his recommendation on repealing the article. Originally, this article was simply meant to change to street names to correspond with the 911 mandate.

Mr. Vose asked, “how did it get on the ballot?” Ms. Mansouri said she just wanted to use simple language but somehow the language morphed into something else. The Planning Board had two hearings on the article.

Solar ordinance. Model Ordinance from NH Energy. Stephen Buckley NH Municipal Association.

The secretary handed out a document from the NH Municipal Association that described all you needed to know about solar energy – how to mount the panels and where and how to place them. The Planning Board is also looking into a solar ordinance so the secretary gave the Board a copy of the Hollis solar energy ordinance, which is the one the Planning Board is considering. She will distribute a copy of what the ZBA Board received to the WP Board. It will be discussed at the next meeting.

Ms. Barnes will send the secretary information on wind turbines and the secretary will distribute it to the Board.

Matrix: Ms. Trow did an excellent job of putting together three matrices that deal with the different zoning districts. The Board will look over the matrices that deal with the commercial/industrial districts and the rural/ag district at the August meeting.

Avitar Map: Avitar has sent a revised zoning map that includes street addresses. Ms. Trow and Ms. Barnes will work on it in August or September to check the street names with the street names in the zoning ordinances.

Change of start time for ZBA. Ms. Mansouri mentioned that the Grange is talking about changing their meeting time from 7:30 pm to 7 pm. She asked the Board what they thought about changing the ZBA start time. Some said they were flexible and it didn't make any difference. Mr. Vose said most of his meetings start at 7 pm not 7:30 pm. Mr. Murray like 7 am. After a short discussion Ms. Trow made a motion was made to change the regular start time for ZBA meetings 7 pm. effective in September. Mr. Murray seconded the motion and it carried.

According to the bylaws there must be two successive meetings that discuss and vote on a change to the bylaws. So the matter will be on the agenda in July.

Phil Carroll property. Mr. Carroll owns three lots on Taggard Road, Map 5 Lots 39, 41 and 41-1. He lives at the house on Lot 39 and has gutted the house on lot 41. He would like to make this structure his study. Mr. Carroll wanted to know the definition of a dwelling. The state definition says a dwelling has sleeping, cooking, eating and sanitation facilities.

The Board said the best thing for Mr. Carroll to do is to get a Voluntary Merger to join the two parcels and use the structure on Lot 41 as an accessory or out building. A Voluntary Merger does not require a Public Hearing, but you do have to get approval from the Planning Board.

Handouts: Two Sentinel stories about local ZBAs.

Respectfully submitted,
Marilou Blaine

cc: WPB, ZBA, Town Offices, North Walpole Commissioners, The Walpolean, www.walpolenh.us
Posted: Inside Town Offices, on the bulletin board outside Walpole Grocery.