

**Zoning Board of Adjustment
Town of Walpole
Wednesday, August 15, 2018
7:30 pm**

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

Recording: Marilou Blaine. These minutes are unapproved and will be reviewed at the regular September 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. She reminded the Board and the audience that in September the ZBA would begin meeting at 7 pm not 7:30.

Minutes: Correct the first name of Mr. Sellarole to Don: Pauline Barnes made a couple of corrections: page 3 change “if” to “is”, “you” to “you’re” and add an “s” to “side”; page 4 change “to” to “for.” Delete “Ms. Leclerc said.” Under Bylaws, add “agreed and voted to the” change. Ms. Leclerc made a motion to accept the minutes as amended. Ms. Barnes seconded the motion. The Board motion carried.

Old Business:

Public Hearing for a Special Exception: Commercial business in a rural/district, Map 4 Lot 3-6 off of Route 12 where the flea market was held. Mr. Joe Sawyer would like to lease a portion of his land to Andrew MacIntyre of Westminster, VT, to store tractor trailer trucks and a couple of pickup trucks for his trucking business.

Ms. Barnes asked if the application is complete. The secretary said yes. Mr. Sawyer do you have a map for a presentation? Ms. Mansouri asked. Mr. Sawyer said he had a map. It was a copy of Tax Map 1 that showed where his property was located.

Ms. Barnes said she understood just a portion of the lot was going to be used. What portion? Mr. Sawyer asked if he could show them right now.

Ms. Mansouri asked if he had a large map, not necessarily a survey map but one that other people could see. Mr. Richard O’Brien of Seward Road said he would like to be able to see it. The map Mr. Sawyer had was 8-inches-by-11 inches.

Ms. Mansouri suggested that the meeting be continued to next month. She said Mr. Sawyer needed a map to present to the public. She mentioned he also needs to go before the Planning Board to get a recommendation from them and that the Board can’t make a decision until the Board gets a ruling from the Planning Board.

Ms. Barnes said it would be helpful if, on the larger map, you not only show the contour of the land but exactly the place where the trucks will be. Ms. Mansouri said she wanted to know the number of feet.

Mr. MacIntyre said it would be 150 feet by 150 feet. There will no buildings. It’s not going to be an Industrial Park.

Mr. Sellarole said there was a question about access. So you may want to show that because the tax map does not show access into the property.

Ms. Mansouri asked about permission from the Department of Transportation. Mr. Sawyer gave the secretary a copy of the DOT permit that Mr. Sawyer gave her at the Planning Board meeting and it is dated August 2, 2018.

Mr. Murray apologized to Mr. Sawyer for “the log jam.”

Ms. Trow made a motion to continue the hearing to September 19 at 7 pm. Ms. Barnes seconded the motion and it was approved.

A gentleman who lives on County Road asked if Mr. Sawyer also need a lighting plan and environmental and traffic studies. He said that was a requirement of the gas station proposal next to the veterinary hospital. This project will not have a building nor lighting.

Mr. O'Brien said he found that area dangerous and several near miss accidents as cars were coming out onto Route 12 from the flea market. He also said he thought there were too many special exceptions and variances being given out and a lack of green space is a concern.

Public Hearing for a Variance: Hooper Golf Course, Map 8, Lot 62, Residential A. Subdivide the cottage lot, which is a non-conforming lot. Lots in Residential A require 200 feet road frontage and 40,000 square feet of property. This lot is 0.34 acre, 14,950 square feet and has 89.7 feet road frontage.

The owner of the property, Fred Dill, was present as well as the surveyor Wendy Pelletier, who prepared the map for The Monadnock Conservancy.

The Hooper Golf Club was purchased and the intent is to sell off two buildings. The rest remains in a Conservation Easement. The little cottage property is far smaller in size and road frontage that zoning ordinances require so a variance is needed. Ms. Mansouri asked Ms. Pelletier to read her answers to the Variance criteria.

1. The proposed use would not diminish surrounding property values because:

Although the variance will not affect the neighborhood, since the existing residence has existed for many years as part of the Golf Course Property. Further, since no further construction on the abutting property is permitted under the Conservation Easement, there is no risk of further development along the road that might diminish surrounding property values due to overcrowding.

2. Granting the variance would be of benefit to the public interest because:

“A variance is contrary to the public interest or injurious to the public rights of others if it unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives. Because the fundamental premise of zoning laws is the segregation of land according to use, one way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality. Another approach is to examine whether granting the variance would threaten the public health, safety or welfare.” *Farrar v. City of Keene, 158 N.H. 684 (2009)*.

Granting this variance will benefit the public interest, since there is an existing single family residence on the Parcel, and the intent of the Residential A District is to promote single family residential use. Given the existing residence on the Parcel, permitting the variance will not affect the neighborhood or alter its essential characteristics.

3. Denial of the variance would result in unnecessary hardship to the owner. Hardship as the term applies to zoning, results if a restriction, when applied to a particular property that distinguishes it from other properties under similar zoning restrictions. Hardship, under zoning laws, has nothing to do with the physical or economic condition of the owner. It must be the property itself.

“Special conditions require that the applicant demonstrate that its property is unique in its surroundings. In addition, the proposed project is presumed to be reasonable if it is a permitted use under the Town’s applicable zoning ordinance.” (citations and quotations omitted). *Malachy Glen Assoc. v. Town of Chichester, 155 N.H. 102 (2007)*.

In this case, the uniqueness of the land in its surroundings is established by the fact the existing residence has existed for many years, and the proposed use of the house will be unchanged from its use since it was built – as a single family residence. In addition, the area surrounding the Parcel is the remaining golf course, which as noted above, is subject to the Conservation Easement. which prohibits further development. Thus, as a practical matter, granting the variance will approve an existing lot that is surrounded by more than 100 acres, which cannot be developed. That is a large back yard!

Thus, the hardship in this case is that the minimum acreage and frontage restrictions. When applied to the Parcel, distinguish it from other properties under similar zoning restrictions because this lot is surrounded by land that cannot be further developed and the residence on the lot has been used for many years for residential use.

These factors show that the special conditions of the property make the variance sought here reasonable and necessary and the proposed variance will, of course, not alter the essential character of the neighborhood.

In addition, given the small size and frontage of the Parcel (not subject to the Conservation Easement) there is no other reasonable feasible method to obtain a variance to allow subdivision of the Parcel.

4. Granting the variance would do substantial justice because:

There is no gain to the general public by the denial of the variance, since granting the variance would not result in any change to the existing use of the residence on the property, or a change in the neighborhood. Substantial justice would also be done by granting the variance because it would allow Applicant to sell the residence and the parcel separately from the golf course Property, since the two properties are not dependent on one another, and sale of the golf course property to allow it to remain operating as a golf course to help the local economy and enhance the neighborhood.

5. The proposed use would not be contrary to the spirit of the ordinance because:

“The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.”

Granting the variance to permit the existing residence to be sold separately from the Golf Course Property, will not be contrary to the spirit of the ordinance because the proposed use will not change, and subdivision of the parcel will not threaten the public health, safety or welfare, and will not alter the existing character of the neighborhood.

An audience member asked, What is the road frontage? The reply was 89. 7 feet. Ms. Mansouri said the property is in Residential A and that requires 200 feet road frontage

Ms. Pelletier said that there were stone walls around the property and those were used as the property lines.

Ms. Trow asked if the house and cottage could be kept together. Mr. Dill said that was kind of hard because one is rental property and the other is commercial property. It’s simpler to do it this way, he said. Mr. Murray asked if anything else will be added to the property. Mr. Dill answered no. The restrictions are on the size of the property.

There were no more questions from the audience or Board, so the Public Hearing was closed.

Mr. Anderson said this is a unique situation. Ms. Barnes agreed and added that the conditions of the property distinguish it from any other property. The Board went through the criteria one by one.

1. The proposed use would not diminish surrounding property values because:

The Conservation Easement is the important matter. Nothing is basically going to change at the site and it has been there in this way for a long time, Ms. Mansouri said. Mr. Dill said the property owner would take better care than a renter.

2. Granting the variance would be of benefit to the public interest because:

I think this criterion is an interpretation of a court case, Ms Barnes said. It’s not contrary to public interest because it’s been existing there. Mr. Dill said it was originally built for a maintenance person at the golf course.

3. Denial of the variance would result in unnecessary hardship to the owner. Hardship as the term applies to zoning, results if a restriction, when applied to a particular property that distinguishes it from other properties

under similar zoning restrictions. Hardship, under zoning laws, has nothing to do with the physical or economic condition of the owner. It must be the property itself.

The Board agreed with Ms. Pelletier's explanation.

4. Granting the variance would do substantial justice because:

There are thousand of pages on substantial justice. Ms. Barnes said. Ms Mansouri added that it would be a shame to see the house deteriorate and not have someone in there house to take care of it. Ms. Barnes said she thought that the town has shown substantial interest in insuring that property is preserved because the townspeople donated so much money towards buying the golf course. You could argue that substantial justice has been done because there were so many individual contributors.

5. The proposed use would not be contrary to the spirit of the ordinance because:

Ms. Trow said it will release the density of anything being built on that area.

Ms. Leclerc made a motion to approve the variance and it was seconded by Mr. Murray. The Board voted to approve the motion and the variance.

Public Hearing for a Special Exception to allow a commercial business for an auto repair shop in the Industrial Park. Tax Map 1 Lot 3-7: Peter Dexter, owner of DBA Dexpart, requests a Special Exception to move his auto repair business into another building in the Industrial Park. The building was previously used for production of modular home components by Bensonwood Homes and originally was where platform tennis courts were made.

Ms. Trow recused herself because she uses Mr. Dexter to repair her car. Ms. Mansouri asked Alternate Mr. Anderson to fill her place.

Ms. Mansouri said that part of Mr. Dexter's application talks about a Variance and part of the application talks about a Special Exception.

Mr. Dexter explained that he was a small business owner, he followed the rules, and at no time was he made aware that he needed any more than a small site plan map or extra copies prepared for the public. This is some that you might want to alert applicants to in the future so they will be prepared when they come to present these things. This took a lot of time and money to prepare.

Ms. Barnes said she thought he provided a lot. There was a map and several photos.

Requirements for a Variance and Special Exception have some of the same conditions. Mr. Dexter said he would submit a Special Exception application.

Mr. Dexter said he had been at this property 10 years and the proposed building he wanted to purchase was 400 feet away from his current building.

Ms. Mansouri suggested a continuance for final approval after the recommendation from the Planning Board.

Mr. Dexter wanted to know what the Planning Board would want to know. Ms. Leclerc said the Planning Board would want to know if the use of the building is appropriate with the Master Plan on the proposed district and if the property currently zoned for commercial operations is either unavailable or inadequate for the proposed use.

Mr. Richard O'Brien wondered why Mr. Dexter could speak and Mr. Sawyer couldn't. This is junkyard. He asked Mr. Dexter, "How many unregistered cars do you have on your property today?" Mr. Dexter said he didn't know. Mr. O'Brien said it was over 100. Mr. Dexter agree that it could be. Mr. O'Brien wanted to see a map.

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“We do have a copy of a map,” Ms. Barnes said. Mr. O’Brien said I would like one that I could see. Ms. Barnes said she would be happy to share it with him. When Ms. Barnes showed him the map, he said he couldn’t read it because he had very bad eye sight. Ms. Barnes then produced a magnifying glass. Mr. O’Brien said he still couldn’t see the map.

Mr. Dexter said he wanted to meet all the criteria and wanted to work with the Board. He said there are more cars than he wanted. But there are cars that have parts for the cars he repairs - VWs and Audis. And he said customers that can’t pay to have their cars repaired just leave them and he’s stuck with doing the paperwork to get rid of them. He believes in reused and recycle. More than 95 percent of business is repairs. It’s an accumulation of cars over 10 years. Some could go to scrap. But a number of them are antiques, collectibles such as mini vans, they are irreplaceable. He would be glad to reduce the number there.

Mr. O’Brien repeated that it’s a junkyard and too close to Route 12. He complained there are too many Variances and Special Exceptions given out and the Industrial Park has turned into a hole.

This went back and forth for a short time. The crux of the matter was that he answered the questions that would be for a variance form rather than a special exception form. Mr. Dexter assumed it was the same form he filled out when he went into the building he is in 10 years ago. Ms. Leclerc suspect that the ordinance has changed since then.

His wife Kara Dexter said that they had talked about a salvage yard and Mr. Dexter said he had started reducing the number of cars.

If you switched locations tomorrow, Mr. Murray asked, how many cars would you take to that place. Would you consider 50?

Someone asked if there are regulations that dictate the number of unregistered sitting on a lot. Is it junkyard? The Board did not have the answer and needed to look up the statute.

Mr. O’Brien speculated that he’s too close to Route 12 and you have to be licensed by the state.

Mr. Dexter said he’s been in business for 17 years and it’s a challenge finding a place to run an auto repair shop. He said he doesn’t need to be on a busy road. He specializes in two types of cars and being off the beaten path and out of sight is alright with him.

Mr. Dexter said the Board’s concerns can be addressed. The building he would like to move into is twice the size of inside space. Some of the vehicles he really wants to kept could be put inside.

Ms. Leclerc believes that 10 years ago the zoning ordinance didn’t have the Special Exception category and that the zoning law itself has been modified. The terminology is different. A Variance goes with the property, a Special Exception means that the land reverts to its former use.

Mr. O’Brien asked how he could get a Variance on property that he didn’t own. It was the owner of the property who got the Variance on behalf of the owner, Ms. Mansouri said. The owner at that time was William Lantz and the Variance was gotten either in September or October of 2008, Mr. Dexter said.

Ms. Mansouri asked Mr. Dexter to read what he had written for the variance.

Criterion #1 The use would not diminish surrounding property values because: The surrounding property is an industrial park. Neighboring businesses include another auto repair facility (Martel Auto), a freight company (Old Dominion), a dumpster/waste company (Ruggerio waste disposal), a bridge construction company (Cold River

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Bridges) and my current auto repair business, Dexpart. There would be no change in use for my business, simply moving to a bigger building across the street.

Criterion #2 Granting the variance would benefit the public interest because: Dexpart is an established business in the community, providing specialized service for VW and Audi vehicles saving local customers time and inconvenience traveling for specialized service. The nearest Audi dealer, for instance, is over an hour drive away. Another benefit to the public interest is the location. At the end of the dead end in the Industrial Park, is far less visible to the public than most, if not all commercially zoned areas closer to town, residences, and other businesses.

Criterion #3 Denial of the special exception would result in hardship because: This is an established business which has out grown its current facility in size. Moving such a short distance would be much more efficient than a move to a further away, less appropriate location. The new 6,000 square-foot facility is perfectly sized and suited for the current needs of the business. Moving further would certainly be a substantial hardship.

Criterion #4 Granting the variance would do substantial justice because: Again, this is an established business, operating under an existing Special Exception in the same zone and area, with no proposed changes to the scope of the business. The industrial park/zone seems, in the spirit of the zoning rules, a perfect place for this type of business.

Criterion # 5 The proposed use would not be contrary to the spirit of the ordinance because: The industrial park/zone was established to allow businesses of this type and nature to have an appropriate location to operate. The Industrial park/zone seems perfectly suited, and the most appropriate location for this type of business.

While the proposed building land is 6.4 acres, what is usable is a lot less, Mr. Dexter said. Behind the property is a tree-lined area with a steep embankment and Houghton Brook. There's about 4 acres there and it creates a buffer between the building and the area behind the property. In spirit of not encroaching on neighbors. Public interest benefit to the community is that it's a specialized service and owners don't have to travel far. Similar businesses are in the Industrial park. The new building is 6,000 square feet. There's no better place than here.

Mr. O'Brien strongly suggested the Board take a field trip to the place.

Ms. Trow said Mr. Dexter is the mechanic for her. He does good good job and he is located in appropriate place, He is set back from the road, not in the middle of town. What better place for it. I see no reason not to allow the business.

Mr. Murray asked if had a lease. Mr. Dexter said he had a month to month lease. He could purchase that building but the owner wants a lot of money for it and the other building is larger. Then he asked about the current owners of the building. Do they have any problem with the cars. Mr. Dexter said they seem to have no have no problem and most of cars are drained. Most of the cars are in the back now and it backs up to Ruggiero's Waste facility so no one else can see it.

He explained the prices of scrap metal had gone down. It was several time higher and if he sold those cars for scrap metal now he would lose a lot money.

The secretary said she stopped at his place to deliver something to Mr. Dexter and she couldn't see that many cars and the ones that were that were neatly in a few rows.

Mr. O'Brien said he didn't care how neatly they were arranged but it's how many there are.

Ms. Mansouri closed the Public Hearing and said the Board has a lot to think about.

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If we were not allowed to rule on this matter unless it was licensed junkyard, would you be willing to talk about? a Board member asked. Mr. Dexter said he would.

We have to look at the regulations, Ms. Leclerc said.

I would have a hard time voting tonight because I have to look up statutes, Mr. Anderson said.

Ms. Mansouri recommended a continuance to our next meeting. In the meantime we'll find out if there is a certain number of cars allowed.

She suggested looking at the original files to see what was originally granted.

The original owner of the property was William Lantz, Lanbro Lane.

A motion was made, seconded and approved to continue the meeting to next month.

Mr. Sellarole asked if every applicant knows what is needed for a presentation. He could see the frustration of the applicants tonight. He wondered if, as a matter of routine, they should be reminded to bring certain things.

Gravel Pits Inspections forms given out:

Don Sellarole, Myra Mansouri, Bob Anderson – Hodgkins Drewsville pit, Industrial Park.

Tim Graves, Wentworth Road– Tom Murray

Joe Sawyer, Route 12 – Jan Leclerc

Pauline Barnes and Ernie Vose – Cold River and Whipple Hill

Banana Signs

Ms. Joanna Andros, a Planning Board Alternate, wanted to talk about the banana sign that were popping up around town. She asked if they were allowed.

Ms. Mansouri said they are temporary signs and temporary signs are allowed. Ms. Andros said these are increasing and they could be distracting.

There is an ordinance about oscillating signs. The purpose of these signs is that they move with wind because they are so light. No action was taken and Ms. Andros just wanted to bring it to the attention of the Board.

A motion was made to adjourn the meeting. It was seconded and approved by the Board.

Respectfully submitted,
Marilou Blaine

cc: ZBA, WPB, North Walpole commissioners, Selectboard, Town Offices, The Walpolean.
Posted: Inside Town Offices, bulletin board outside Post Office, Town website www.walpolenh.us/

