

**Zoning Board of Adjustment  
Town of Walpole  
Wednesday, September 19, 2018  
7 pm**

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

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

**Roll Call:** Ms. Mansouri called the meeting to order at 7 pm. One Board member was absent so Alternate Bob Anderson was asked to fill in.

**Minutes:** Several small corrections were made by Ms. Trow and Ms. Barnes: for example, on page 4 agree was changed to “agreed” and the articles “a” and “the” were added before a noun in a couple of cases. ( Example, This is “a” junkyard on page 4 and he does “a” good job on page 6.) Ms. Trow made a motion to approve the minutes as amended. Mr. Murray seconded the motion and the motion passed.

Ms. Mansouri told the Board she wished to take up D&C Transportation first.

**D&C Transportation, Orleans, Vt. Map 10, Lot 2, Rural/ag district. Proposed use: Filling station and convenience store with a drive-thru off of Route 12. D&C is asking the Zoning Board for a Special Exception for a commercial project in a rural/ag district.**

Mr. Jim Phippard introduced himself and explained the proposal. His business is Brickstone Consultants in Keene. Mr. Phippard said this is the same application that was presented earlier this year with the exception that Mr. Paul Saba, the convenience store operator, is no longer involved.

D&C Transportation is the owner of the property on Route 12. It is directly opposite South Street and next to the veterinary hospital. The driveway is shared by easement between the owner of Map 10, Lot 2 with the owner of Map 10, Lot 1.

The lot is 10.2 acres in size and construction of the filling station and convenience store with a drive-thru will be on the terraced area near the road. D&C requested a Public Hearing on Oct. 9, 2018, from the Planning Board last week for a recommendation for a Special Exception and it was approved. Mr. Phippard then requested a Public Hearing from the Zoning Board of Adjustment for a Special Exception for the October 17 meeting.

Mr. Phippard said Walpole’s zoning ordinance allows for a Special Exception for a commercial use in a rural/agricultural zone. Mr. Anderson said that’s true in a commercial zone by Special Exception. Mr. Phippard said in a rural/agricultural zone. Mr. Anderson said the Special Exception is for permitted commercial uses in the rural/agricultural zone. A filling station is not written as a permitted use in the commercial district. Filling stations only appear as a Special Exception in the commercial district. That means that filling stations are not permitted in a commercial district. So, Mr. Anderson said, he was not convinced that the zoning ordinance Mr. Phippard mentioned allows a filling station in a rural/agriculture district.

The uses permitted in a commercial district are:

**A. Uses Permitted**

A building may be erected, altered or used and a lot may be used or occupied only for the following purposes and in accordance with the following provisions:

1. Any use permitted in Residential District Type B under the same provisions as apply to residences in said district.

2. Lodging houses, hotels, motels, inns and tourist cabins including such retail businesses within these buildings as is conducted for the convenience of the guests herein.
3. Shops, restaurants and other retail buildings not exceeding 40,000 square feet in gross floor area.
4. Theaters, halls, clubs and amusement centers.
5. Greenhouses and florist shops.
6. Undertaking establishments.
7. Business and professional offices and banks.
8. Multi-family dwellings subject to the following conditions:
  - a. No building intended for multi-family occupancy shall contain more than three (3) stories for human habitation.
  - b. Not less than thirty percent (30%) of the total parcel shall be retained as open space, unencumbered by buildings, parking lots, accessory structures or other impervious surfaces. Said open space may be used for lawns, gardens, landscaping and passive recreation.
  - c. Each multi-family development shall provide on-site parking in accordance with the following minimum standards:
    - for each efficiency and/or studio unit - 1 parking space
    - for each 1 bedroom unit - 1.5 parking spaces
    - for each 2-3 bedroom unit - 2 parking spaces
    - for each unit exceeding 3 bedrooms - 2.5 parking spaces

#### B. Special Exceptions

1. Wholesale establishments, filling stations, automobile repair garages and used car lots under permit from the Board of Adjustment when said Board is satisfied that parking and loading requirements are satisfied.
2. Industrial and manufacturing operations by Exception from the Board of Adjustment when fulfilling the requirements set forth in Article VII.

Mr. Phippard asked, "How would the Board like to proceed?" He continued, D&C Transportation's lawyer is Michael Bentley and Mr. Bentley feels that this project is allowed by Special Exception based on that rural/ag ordinance.

Mr. Anderson said he would like to hear some clarification on the matter. Mr. Phippard said he would ask Mr. Bentley to provide some documentation on it and he would submit it to the secretary.

Ms. Mansouri asked if he would like to postpone the hearing until November so everyone has a chance to look at the documentation. Mr. Phippard said that he feels it is permitted so there is no reason to postpone the hearing. If the town's attorney feels differently then they will consider postponing it, Mr. Phippard said. Ms. Mansouri added "or we could have a continuance."

Ms. Mansouri then asked the Board how they would like to proceed after the town's attorney is notified. Ms.

Barnes said she wanted the process to be clear – Mr. Bentley, D&C’s attorney, would be preparing a written document, which he will send to the secretary. Mr. Phippard said, “Yes.” And Ms. Mansouri would consult the town attorney once we have Mr. Bentley’s document.

Ms. Trow made a motion that the Board accept D&C’s application for a Public Hearing in October on Article VIII, C1 for a Special Exception in the rural/ag district for a filling station and a convenience store with a drive-thru, Map 10, Lot 2.

Does that mean both attorneys will be here? Ms. Barnes asked. Ms. Mansouri said she didn’t know the answer to that right now. She continued that the Board would set up a hearing with the document from Mr. Bentley and the remarks from the town attorney.

Mr. Murray asked if the town attorney had enough time to do what he has to do? Ms. Mansouri said she would call him in the morning.

Ms. Barnes seconded the motion on condition that the document is received from Mr. Bentley and the town attorney has time to review it. So Ms. Trow amended the motion to accept D&C’s application for a filling station and convenience store with a drive-thru for a Special Exception in the rural/ag zone of Article VIII, Section C1 for a Public Hearing contingent on the correspondence of the applicant’s attorney regarding Special Exceptions in the rural/ag zone and the town attorney’s response to that correspondence. Ms. Barnes seconded the motion. The motion passed.

**Old Business:**

**Continuance of Public Hearing for a Special Exception: Commercial business in a rural/ag district, Map 4, Lot 3-6 on Route 12** where the flea market was held. Mr. Joe Sawyer would like to lease his land to Andrew MacIntyre of Westminster, VT to store tractor trailer trucks and a couple of pickup trucks for his trucking business. His trucks mostly haul equipment, such as excavators.

Mr. MacIntyre said the Post-It note on the survey map was to scale of the amount of land he wants to use to store three trucks – 120 feet by 120 feet. He’s looking to store 3 trucks and possibly three pick-up trucks. He said there will be no buildings, no paving, plenty of room regarding setbacks on all sides, no maintenance done on the premises, no storage of fuels or oil on the property.

Mr. MacIntyre said the trucks return Friday night or sometimes Saturday morning and leave on Sunday and they are usually gone for a week. They leave between 6 and 8 pm on Sunday and return between 5 and 8 pm on Friday. It’s a safe location and even when the leaves are off the trees you cannot see the trucks from the road.

When a trucker returns, the driver turns off the truck and goes home. Mr. McIntyre said he could stay there as there are fourteen batteries in the truck – enough for eight hours of heat or air conditioning – being charged as the truck is driven – but drivers prefer to go home, take a hot shower and sleep in their own beds.

Mr. MacIntyre now parks his trucks at a business in Westminster, Vt. But the business is growing, space is limited, so he’s looking elsewhere. His request for a recommendation for a Special Exception in a rural/ag district was approved from the Planning Board last week. The Planning Board approved Mr. Sawyer’s and Mr. MacIntyre’s request with two stipulations – 1) If his business grew to more than five truck, he would go back to the Zoning Board for permission. 2) No storage buildings would be built on the property.

He said he’s not looking to have 50 trucks like Old Dominion where trucks are going in and out 24 hours a day..

Are there residences that can see the trucks? Mr. Anderson asked. And do the trucks affect anybody’s view or anybody’s property values? MacIntyre answered no to both questions.

MacIntyre repeated that there will be no lights except when the trucks are coming in and going out and when the drivers go home.

Ms. Mansouri asked about the time when drivers will be leaving and returning. Mr. MacIntyre gave an approximation of 6 to 8 in the evening and 5 to 10 pm on Friday or Saturday. Ms. Mansouri asked if trucks would be pulling in or out at 3 am or 4 am. Most likely not, Mr. MacIntyre said.

Mr. Anderson asked about the length of a lease. Mr. Sawyer said his request hasn't been approved yet.

Mr. Sellarole asked about the length of the trucks turning into the lot. "You don't have 53 footers, do you?" he asked

Mr. MacIntyre said he did have 53 footers but the distance from the gate to the road is 60 feet. Ms. Mansouri and Mr. Anderson measured it. Mr. MacIntyre explained that the truck would be in the breakdown lane and pull up to the gate. The trailer will be at an angle and also be off the road. The angle would be about 22 to 30 degrees.

Mr. Sellarole said he had a hard time seeing that especially when you add a cab, which would add another 16 feet if it were a sleeper. Then he asked Mr. Sawyer if when he had his gravel pit if he had had trucks this long. "You probably had dump trucks," Sellarole said. Mr. Sawyer said sometimes he did have the longer trucks.

Ms. Barnes said the Planning Board minutes talk about a 68-foot long truck. He said the longest he has is 64 feet. She also was having a hard time seeing how trucks could be off the road when they turned into the property and had to stop at the gate. She asked for a diagram and Mr. MacIntyre drew her one.

He said whichever way the truck will be turning into the lot he will first pull into the breakdown lane and then turn into the lot. Coming north, the truck will go a little bit passed the entry and then make a 90-degree turn, crossing two lanes, and be in the breakdown lane on the other side of the road and go in at an angle.

Mr. Sellarole and Ms. Barnes spent some time trying to understand how a 53-foot truck plus the length of the cab could be safely out of the way of oncoming traffic when turning into and going out of the location. The driver has to park his truck, get out of the truck to unlock the gate, get into the truck again and then enter the property. Mr. MacIntyre drew diagrams and tried to explain that the truck would be off the road. It would approach the gate in the shoulder or breakdown lane then turn in at an angle and be off the road, he repeated.

Mr. Sawyer said 35 years ago when he had the gravel pit, he got a driveway permit from the Department of Transportation. DOT decided against a pullover lane and the state just renewed his permit a month ago.

Ms. Barnes was also wondering why Mr. MacIntyre wants to park his trucks there when there are other adequate spots to park. Mr. MacIntyre said right now he is in an Industrial-like Park. He has security on the trucks and feels "out of sight out of mind." In an Industrial Park, he said, you have multiple people coming in and out at all times so you have to fence something in and here he doesn't have to. What are concerned you about? Ms. Barnes asked Mr. MacIntyre. "People stealing chains or messing with the truck," Mr. MacIntyre said.

Mr. Sellarole said he feels as if the trucks would be more safe where there are people and more movement than out in the woods where some kids could get in trouble. Only four people will be going out there, MacIntyre said. Mr. Sellarole said he just thought it would be safer wherethere is more activity and where there are lights. The land is posted, Mr. Sawyer said.

Mr. Murray asked about getting to the back lot. Mr. MacIntyre said the access goes straight back to where the trucks enter the back lot. Murray had walked the lot last year as part of an annual ZBA inspection of gravel pits.

Ms. Mansouri made a list of conditions for approval. There was a discussion by the Board of a few of these

conditions and the list was tweaked.

Mr. MacIntyre was asked if he had all the correct permit and numbers for his business. He said he would drop off all the information about his business - new name, ADM LLC, number of business etc. - at the Town Offices.

Kara Dexter said that as a daughter of a truck driver, she agreed with what Mr. MacIntyre said about the drivers wanting to get home. And she agreed with his statement of "out of sight, out of mind."

Mr. Anderson made a motion to close the Public Hearing. The motion was seconded by Ms. Trow and approved by the Board.

Ms Trow made a motion to grant a Special Exception to Joe Sawyer and ADM hauling LLC, a commercial business, in the rural/agricultural zone, Map 4, Lot 6, Article VIII Section C1 for tractor trailer trucks and a couple of pick ups under the following conditions:

1. Any change or expansion of the use, of any degree, will require a new Special Exception.
2. This Special Exception allows for up to 5 tractor trailer trucks only.
3. No storage of products on trailers for more that 48 hours.
4. No exterior storage of products, repair parts, fuel or trash, etc. on site.
5. No maintenance of vehicles, or repair of vehicles, trailers, or trucks on the property.
6. No idling of trucks overnight, no idling for any longer that it would take trucks to thaw out.
7. If pulling into the lot after 10 pm, no back-up whistles.
8. Access point into lot and tractor/trailer storage as delineated in the site plan review shall be followed.
9. No buildings of any sort allowed on the premises

The motion was seconded and the motion passed 4-1 with Ms. Barnes voting no.

**Continuance of 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, requested 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 so Ms. Mansouri asked Alternate Sellarole to take her place.

Mr. Dexter read his answers to the Criteria for a Special Exception in an Industrial Zone.

State how the proposed use will meet the criteria for a Special Exception listed in the ordinance.

Criterion #1: Currently, there is no zoning ordinance in the Town of Walpole which allows an auto repair business unless it has a Special Exception in either the Commercial District or the Industrial Zone. Dexpart is a locally owned automobile repair business that has already been granted a Variance in the Industrial Zone District. My proposed use would be for a Motor Vehicle Business which is defined in NH RSA 259:60-a. This business would utilize the building already on the property. (RE: #5 on Special Exception application.)

Criterion #2: All the buildings for sale in the Town of Walpole that are currently zoned for commercial operations are not adequate for an auto repair business. The remaining properties are empty lots and I do not want to build when there is an empty building for sale that suits my needs in the Industrial Park. (RE: Article VII - Industrial District: E. Special Exceptions; 1.1.i.)

Criterion # 3: The proposed use is appropriate and consistent with the Town's Master Plan. The Industrial Park and Industrial Zone was established to allow businesses of this type and nature to have an adequate location to

operate without impeding on the individual character and identity of Walpole's three villages. This location would aid in the preservation of the Town's character by being well outside their view on a dead-end road. (RE: Article VII – Industrial District: E. Special Exceptions 1.a.i.)

Criterion #4: The proposed use does not infringe on the primary use of the Industrial District. Yes, the Industrial Districts were specifically created for manufacturing operations. However, the use of an auto repair business in this specific area of the Industrial District will not infringe on the health, welfare, or quiet of the residents in Town, which is why the Industrial District was created for manufacturing operations. (RE: Article VII – Industrial District: E. Special Exceptions 1.a.i.)

Criterion #5: The proposed use would not cause undue hazard to health. I recycle all hazardous materials and fluids following Department of Environmental Services Best Practices Guidelines.

There would be no public safety hazard and no effect on property values due to the isolated location of the building and property in the Industrial Park. The business creates no vibration and little, if any noise. There is little in and out traffic, far less than most commercial businesses in the villages. The building has an approved septic system to eliminate the concern for unsanitary conditions. The nature of our business does not produce noxious odors or smoke of any kind during daily operations. (RE: Article VII – Industrial District: E. Special Exceptions 1.a.i.)

Criterion #6: The Special Exception should be granted because the proposed use would not have any adverse effects on the Industrial or Commercial Districts. The building and proposed area of use cannot be seen by the Residential District or from Route 12 and is located at the end of a dead-end road. Dexpart is an established business in the community. I provide specialized service, repair, and parts for Volkswagen and Audi vehicles, which save community members time and the inconvenience of traveling for specialized service. For example, the nearest Audi dealer is over an hour away. The new facility is perfectly sized and suited for the current needs of my business. Finally, there are already two Motor Vehicle Businesses in the Industrial Park that have received permission to operate in the Industrial District and I am one of them (Martel's being the other). (RE: Article VII – Industrial District: E. Special Exceptions 1.a.i.)

Mr. Dexter said he has had an established business in the Industrial District for 10 years. He was asked how far away he was from a residence. He showed pictures of the only residence that was an abutter. There were trees on his property and on the abutter's property. It was estimated that the abutter's property was about 700 feet away – the length of more than two football fields.

Mr. Sellarole asked about the junkyard issue. Ms. Mansouri read from the minutes of the September 6, 2018 Selectboard's meeting.

“Letter to Peter Dexter: Mr. O'Brien wrote to the Selectboard to inquire as to why the Selectboard gave Mr. Dexter a Junk Yard Permit. Upon reading all the RSAs the Selectboard has determined that a Junk Yard Permit is not necessary because Mr. Dexter is not running a junk yard.

“Mrs. Pschirrer advised that during the Selectboard meeting on August 23, 2018, they voted to “give Mr. Peter Dexter conditional approval for a Junk Yard Permit based on his buying property and moving across the street in the Industrial Park.” Mrs. Pschirrer pointed out that RSA 259:60-a allows a business to run an auto repair shop. She is hearing that people assume Mr. Dexter will be running a recycling junk yard that is not his primary business. He is registered with the State for his business. Therefore, the Selectboard does not need to issue a permit. Mr. Dexter does recycle parts, but his business is an auto repair/service shop.

“Mr. Dalessio moved to rescind the motion previously made during the Selectboard meeting of August 23, 2018, on the issuance of the Junk Yard Permit. Mr. Dexter has a State Permit order per RSA 259:47. His primary business is to repair vehicles. Upon reading all of the RSAs, the Selectboard has

determined that a Junk Yard Permit is not necessary because Mr. Dexter is not running a junk yard. Seconded by Ms. Mayberry, With Mr. Dalessio, Ms. Mayberry and Mrs. Pschirrer in favor. The motion was approved.”

Mr. Dexter said he is planning on streamlining his inventory and reducing the number of cars he has on his property. He said a portion of his business is in recycled parts sales.

Mr. Anderson said that he would like to put two conditions on the motion to approve: 1) that he would continue to maintain the buffer on his property as it currently exists. 2) that he would continue to use DES Best Practice Guidelines for his car repair shop.

A motion was made to allow Mr. Dexter to move his current business in the Industrial Park across the street to a new building and approve the Special Exception to allow a commercial business for an auto repair shop in the Industrial Park. Tax Map 1 Lot 3-7 with the aforementioned conditions. The motion was seconded and unanimously approved.

**List:** Make a list of items applicants applying for Special Exception need to bring to a Public Hearing. After a short discussion, it was decided that it was very important that applicants realize they must make a presentation to the Board and the public. Therefore, they need to bring:

The completed application and abutter list.

A visual drawing or map to display on an easel that accurately describes their proposal. It should be a minimum of 22 inches by 34 inches and should include surrounding areas.

Any other photos, drawings that would help to make the applicant’s case.

The applicant should receive a copy of the applicable zoning ordinance, which explains what the permitted uses are in that district as well as the criteria in that particular district.

The Matrix for that district.

**Public Hearing in October for a Variance** for a shed at 25 School St. Colleen Canedy. Map 19 Lot 59. The 20-foot side and back setbacks are not possible because of the size of the lot.

Mr. Johnson had requested a Public Hearing for a Variance for his shed in June and it was approved. But a few days later, he withdrew that request. So Ms. Trow made a motion to have a Public Hearing on a Variance to build a shed on the Ted Johnson property at Map 19, Lot 59, 25 School St. in October. The motion was seconded and approved by the Board.

There was discussion on the handling of the meeting with Mr. Johnson and Ms. Canedy in June. Ms. Mayberry said Ms. Canedy was told a couple different things from friends and neighbors about how they were to proceed. Ms. Mayberry recommended that when people have questions, they should be directed to the Town Offices where Jodi Daigle or Sarah Downing can accurately answer their questions on how to proceed. She had talked to Ms. Canedy and Ms. Canedy said she was very frustrated and didn’t know what to do.

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

**Handouts:**

Amended 2018 Site Plan

Announcement of a Water Conference

A Keene Sentinel article on the decision of the court regarding the Selectmen in Stoddard suing the Stoddard Zoning Board of Adjustment on two occasions.

Next meeting **Wednesday, November 14, 2018**

Respectfully submitted,  
Marilou Blaine

Posted: Inside Town Offices, Outside Post Office, The Walpolean.  
Cc: ZBA, WPB, North Walpole Commissioners, Selectboard, Town Offices.