

**Walpole Zoning Board of Adjustment
Minutes September 218, 2019
Walpole, Town Hall
7 pm**

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

Recording: Marilou Blaine. These minutes are unapproved and will be reviewed at the regular October 2019 meeting for corrections, additions and/or omissions.

Roll Call: Ms. Leclerc called the meeting to order at 7 pm. There was a full board present so an alternate was not needed to fill in.

Minutes: Ms. Trow made a motion to approve the minutes as written. Ms. Mansouri seconded the motion and the motion carried. Ms. Trow made a motion to approve the workshop minutes as written. Mr. Murray seconded the motion and the motion carried.

Old Business:

Public Hearings:

No. 1

Variance for Smith Family Trust, Ralph Smith, 409 Main St., Tax Map 12, Lot 8, Commercial and Rural/Ag, Article IV-Section-N, Sections 1B and 1D, size of dwelling is 1152 square feet not 900 square feet; distance from principal dwelling is 206 feet, not 150 feet. Ralph Smith and his son, Steven Smith were at the meeting to explain that they wanted the variance to convert a two-car garage into living space for his brother and wife so they could look after his aging parents.

Mr. Steven Smith presented an aerial view of the property. He pointed out where the sewer line connection to Chamberlain Machine line would be and where the line would hook into the converted garage as well as the main house. The Chamberlain line is a private line. He pointed out the surrounding abutters – Mr. Lacoste, the chiropractor, Diamond Pizza and Bensonwood. His father owns from Main Street, up the driveway, in back of the pizza restaurant, to the trees and cornfields in back. There are two woodsheds in front of the two-car garage and the driveway continues through to the garage. There are two turn-arounds for vehicles in the driveway and it is all paved. The setbacks are all conforming.

The floor plan of the converted garage shows a one-story dwelling with open-space living quarters for the kitchen, dining and living rooms with two bedrooms and two baths as well as a laundry. There will be no garage. The frontage on Main Street is 102 feet so the property cannot be subdivided into another lot.

The hook-up for the sewer will be to the Chamberlain Lane sewer line that Chamberlain Machine put in when the facility was built. At the rear of the property the line will go south through the Bensonwood property to the Chamberlain line and both parties have agreed to easements for the proposal. According to an email from Water and Sewer director Mark Houghton, “a town connection permit (is needed), which is \$750.00, for you to put together all the magic to make it legal as it’s not a town-owned line.” There was already a water easement for Mr. Smith on the Bensonwood property. The hook-up is being worked on right now – with Chamberlain Machine, Bensonwood, Mark Houghton and the lawyers, Mr. Steven Smith said.

Mr. Smith did not hook up to the sewer line that goes down Main Street in 1985 when the house was built because the sewer line ran down the east side of Main Street, not the side of the road on which

his residence is. He would have had to pay to go under the road.

The question of abutters came up. Mr. Steven Smith said he already had talked to some of the abutters and they did not object to the garage being converted into a living space. There are some big evergreens between his father's house and the pizza place to the northeast. Also, some evergreens between his house and the Bensonwood property. No abutters were at the meeting to complain or object to the variance proposal.

Ms. Barnes said a variance focuses on special aspects of the property that make it different from other properties but it also considers the built environment. The fact is that the garage is already there, the driveway is already there. It appears in some court decisions that these facts about it being already there are favorable.

The hardship is because the possible new living space is already built and there would just be a change to the interior of an existing building.

A question came up about putting an addition onto the garage. Mr. Steven Smith said the building is for just his brother and his wife, who would be living there. Their children are all grown.

A Board member pointed out that according to the ordinance the converted garage could always be rented to someone and it did not have to be to a family member. However, the owner of the property would have to live either in the converted garage or in the main house.

Ms. Leclerc closed the Public Hearing and began reading the answers to the Variance criteria. She read the question and answers (in bold) given by the applicant and then the Board discussed their thoughts on the matter (in italics).

1. The proposed use would not diminish surrounding property values because:
The existing building will not affect any of the abutters.

The building is already there. Apparently he's talked to neighbors and there is no objection to the building.

2. Granting the variance would be of benefit to the public interest:
It would be **helping elderly parents.**

It is important that you retain a residence for a parent in need, but also it is important you have a place for someone new that is of benefit to the Walpole public. It is a much better situation for the parents.

3. Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property that distinguishes it from other properties similarly zoned because:

The owner would have to hire someone to come in and assist the elderly parents and it would be a hardship, both personally and financially to them.

Getting back to a previous point and dealing with the building being 56 feet more than the ordinance allows: You would have to remove two other buildings to get to the garage and then the building would have to be moved. It's already existing. That constitutes hardship.

4. Granting the variance would do substantial justice because:

It would be easier to have family assisting and living on the property with minimal expense to the owners.

It allows elderly, in-need parents to stay in their own home on their own property.

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

The current ordinance already allows the separate residence on the current property to be constructed to help the elderly (parents).

The ordinance was designed for a situation like this so it exemplifies the spirit of the ordinance.

One septic system is required and thus both units have a joint use.

Would you consider having the similar answers for the questions about the size of the building, Ms. Leclerc asked. The Board said yes.

The building is an already existing building. And it already says in the ordinance that a larger space may be permitted by a variance so that's kind of an invitation to a larger space. Our discussion is that it's on a solid foundation. I don't think 200 square feet more of living space changes anything in the ordinance.

Ms. Mansouri suggested making the approval subject to letters from both Bensonwood and Chamberlain confirming the easement.

Ms. Trow made a motion to approve a variance to article VI, Section N regarding the Detached Accessory Dwelling Unit ordinance, Section 1-B that refers to greater than 900 square feet and Section 1-D, that refer to greater than a 150 feet from the principal dwelling unit, pending a septic easement agreement between the property owner and Chamberlain Machine and Bensonwood. Ms. Mansouri seconded the motion and the motion carried 5-0.

No. 2

Variance for Griffin and Andrea-Vickers Sivret, 56 Old Keene Road, Tax Map 18, Lot 18, Residential B, Article V, Yard Requirements. A garage on the property will be 7 feet, instead of the required 20 feet, from the adjoining property line after a boundary line adjustment. The abutting property, Lot 19, is owned by Caribou Realty LLC.

Mr. Di Bernardo said that Caribou Realty bought property next to the Sivrets and they are putting a lot of money into the house and lot. According to a letter from the owner of Lot 19, Noelle Kowalczyk, they had a purchase and sales agreement with the abutter, Griffin Sivret and Andrea Vickers-Sivret, involving a sliver of land along the common boundary of the properties. After signing the purchase and sales agreement, a garage, which the Sivrets don't use, would not be within 20 feet of the new common boundary line and thus would no longer comply with the 20-foot-side setback required by the Zoning Ordinance. A variance would be needed.

Ms. Kowalczyk stated in her letter that "we have already purchased approximately 50 trees and shrubs to plant on the Caribou Realty land, many of which will be planted on the sliver of land. In addition, permitting the Sivret's existing shed to remain in its location will not change the existing aesthetics of the properties, as the shed's location is not objectionable to Caribou Realty and will not affect the use of the our property. In fact, the additional environmentally-friendly "green" screening we hope to plant on the sliver of land will more than make up for the fact that the shed's existing location will be closer to the adjusted boundary."

Mr. DiBernardo read the entire letter. It will be attached to the minutes.

Mr. DiBernardo said he was representing Caribou Realty but since the shed is on Sivret's land and the variance will be for the Sivret property, he assumed he was representing both. They are hoping for the

boundary line adjustment, so they are the applicant. Sivrets signed the variance application.

A couple of Board members asked if there was a little cutout of the boundary line, it wouldn't need a variance. Later in the meeting, Mr. DiBernardo said in his opinion that would create more of a problem than there is now.

Mr. Vose said the building is already in non compliance because it is too close to the road. But it has been grandfathered because it was built before zoning ordinances were approved. So why go through all this?

Abutter Jerod Walters inquired about his concern that the property could be divided. After checking the map, it was noted that there is not enough road frontage to create two lots. The property is in Residential B and it requires 150 feet for each lot. The total frontage of the Caribou property is 196 feet. That's the current frontage. If the boundary line is adjusted, it would add another 13.82 feet, still not enough for the required 300 feet for two lots.

The tenor of the application is all about privacy and screening, Ms. Barnes said, but ironically it is taking land and privacy away from the Sivrets, said Ms. Barnes. If you look at the picture, the future owners would have less privacy.

Mr. DiBernardo said the purpose of a side yard setback is so people can't build on top of one another.

But suppose a future owner of the Sivret property wanted to make the garage a detached accessory dwelling? Ms. Barnes asked.

Mr. DiBernardo said the whole thing that prompted this discussion was when it was being surveyed. It was noticed that there were a lot of old trees on the boundary that could fall down on the Caribou Realty house.

Is the approval of the variance contingent on the decision for a boundary line adjustment that is before the Planning Board? Mr. Murray asked. The answer is yes. If the variance is denied, the boundary line adjustment can't go to the Planning Board. Mr. Murray continued that he didn't see any trees that could harm the house. They've already gone in and began cutting. Mr. DiBernardo showed a photograph of a couple of trees that had already been taken down. DiBernardo added that part of the purchase and sales agreement was that they could start cutting. If they wanted privacy, Mr. Murray said, they could still go in and put in some low bushes and shrubs and you wouldn't even see your neighbor.

Whether they subdivide or not is none of our business, Mr. Vose said.

Ms. Leclerc said the thing is that now the shed/garage doesn't need a setback. She wasn't worried about the rest of the boundary line. She was trying to determine if there is a hardship.

Mr. DiBernardo, quoting sometimes from a legal opinion, said every incidence, when you're considering a variance, is somewhat unique. The proposal must conflict with the ordinance. In determining whether a variance violates the terms of basic justice, you must consider whether it would alter the essential character of the locality or threaten the public welfare.

Basically, they're saying use common sense here. It isn't going to adversely affect anyone, not the Sivrets or Noelle Kowalczyk, or their neighbors, It's not going to reduce property values. It's going to give both parties the screening they want. The building's not being used by the Sivrets.

4.

Mr. Walters, the abutter, asked, Why would a neighbor object to a neighbor spending \$20,000 on putting in trees because it helps out both property lines. He said he worked for the previous owner and the land in that area by the shed 15 feet is miserable. It's full of vine and it's too close to the garage, You can barely back up with a truck and a snow plow. And the drainage was terrible. It used to wash out when there was a downpour..

Mr. Murray speculated from the pictures that the problem might have been already taken care of and upgraded. Also. He said the garage is unusable. You can't drive a car into the garage right now because there are two sandboxes and some swings in front of it. It's more like a storage shed.

Other statements from the abutters indicated they wanted more distance between the two houses and what the Board have heard was the whole thing is a privacy issue.

Ms. Leclerc said one thing to consider is if you deny the variance is it a benefit to the public and does that outweigh the position of the owner. What is the hardship? A hardship is necessary.

Ms. Leclerc closed the Public Hearing. She read each criterion separately, then read the applicant's answer. (In Bold). And then the Board commented on each one. (In italics).

The proposed use would not diminish surrounding property values because:

The adjustment impact is minimal on Lot No. 18. Area within the adjusted lot is currently unmanicured nature growth.

The whole purpose of granting a variance is to improve the two properties. This at least improves the aesthetics.

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

Granting the variance would be a benefit to the public interest because it would create a better boundary between the two properties that would allow for better screening and landscaping, avoiding possible boundary encroachments and disputes in the future.

Ms. Barnes said she was still hung up on the word setback and doesn't see how shifting space to one abutter would be considered to be a good thing. As she said before, a setback is to create light, air and a buffer and is necessary so you don't come to blows with your neighbors. It is contrary to the ordinance.

Ms. Mansouri said she disagreed and if they are purchasing the property and putting in lots of dollars into landscaping that wasn't theirs, whoever may own the property after the Sivrets they could come and mow it all down.

Ms. Mansouri said that this shed/garage is on a concrete pad and can't be moved, and the distance from frontage is grandfathered already. It's not going to make any difference what the difference is on another side.

Ms. Barnes said she was thinking of the future when someone who owned the property didn't have any problem with the building being there.

What kind of problems could they run into? Ms. Mansouri asked. Ms. Barnes said she didn't know.

Mr. Sellarole said that this application is coming from the Sivrets. The Board's been thinking of this from the abutters side. Yes the line is there for a reason, it's a setback. But the applicant doesn't

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have a hardship. The variance lies with the applicant. I could see the abutters' point for a variance but that's not where the variance coming from.

3. Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property that distinguish it from other properties similarly zoned because:
Denial would result in an unnecessary hardship because the area that Lot 19 would require would provide for screening between the two lots. Without the acquisition of the adjusted area Lot 19's privacy could be jeopardized. Lot 18 does not currently occupy or use the adjusted area.

Ms. Leclerc said that's the Sivrets. That's where she sees a problem because the hardship is for the abutters but not with the Sivrets.

Can anybody come up with a hardship? she asked.

4. Granting the variance would do substantial justice because:
Granting the variance would provide Lot 19 with more privacy and area to install screening vegetation and allow for better property management between the two lots.

Both the applicants are alright with it and no one else would really care.

It's not necessary.

5. The proposed use would be contrary to the spirit of the ordinance because:
No change in existing use is proposed.

Mr. Murray said, This is one I agree with. It wouldn't be a threat to use..

Ms. Barnes disagreed and she went back to her argument for setbacks. The distance between them is psychological.

Mr. Vose said there are a lot of ways that the lots can have a boundary instead of where the shed/garage is. There are a lot of way to get around this. So it's really not a hardship.

Mr. Leclerc took a vote on the variance. Ms. Trow made a motion to deny the variance requested to Article 5, Land Standards No. 2 due a lack of hardship and it is contrary to the spirit of the ordinance. Mr. Murray seconded the motion. Vote: Deny 5, Opposed 0.

Bylaws – Two additions to ZBA bylaws:

RSA 91 "Raw materials: Tapes and notes used to compile meeting minutes are governmental records as long as they are retained: policy to discard/reuse after minutes are approved is acceptable."

Voting on Variances: The Board will discuss each of the five criteria separately, but have one vote on the decision for the application for a Variance.

This is the second meeting where changes to the Bylaws are being discussed and will be voted on.

Ms. Leclerc read the two bylaws that were to be added to the bylaws. A motion was made and seconded to approve the change to the bylaws. The motion carried. The additions about voting on variances will go at the end of the General Rules of Public Hearing and be "n." The addition about minutes will be a separate section IX at the end of the bylaws.

6.

Errors to Town Report – What to do about them? Ms. Leclerc called the NH Municipal Association about the two approved warrant articles that were not added to the ordinances and was told they could be added to the zoning ordinance without any further action.

Avitar map – Letter sent to Select Board.

Avitar maps were collected to be returned to the Select Board. Two Board members not returning the maps will drop the maps off at the Town Offices.

Gravel Pits: Assign inspection of pits.

Don Sellarole and Ernie Vose - Cold River Materials and Whipple Hill gravel pits.

Myra Mansouri and Tom Murray - Hodgkins pits at the Industrial Park and Drewsville Road.

Judy Trow and Pauline Barnes - gravel pits at Joe Sawyer's and Tim Graves' property.

Roof shed: Don Sellarole presented a drawing of a lean-to type of shed he wants to build at his home on High Street. The wall of the garage would be used and four poles would hold up a roof. There would be a gravel floor. It would be open on three sides. Mr. Sellarole was told he needed to go to the Town Offices for a building permit.

A motion was made and seconded to adjourn the meeting at 9 pm. The motion carried.

Handouts: Conference in October in Concord, Telecommunications regulations.

Next meeting: Wednesday, October 16, 2019

Respectfully submitted,
Marilou Blaine

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

cc: ZBA, WPB, Town Offices, North Walpole Commissioners.

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