

Zoning Board of Adjustment minutes
October 21, 2020
Town Hall
7 pm

Present: Board members: Chair Jan Leclerc, Vice-Chair Myra Mansouri, Clerk Tom Murray, Pauline Barnes. Alternates: Don Sellarole and Judy Trow. Absent: Dave Edkins and Ernie Vose.

Recording: Marilou Blaine. **These minutes are unapproved and will be reviewed at the November 2020 meeting for corrections, additions and/or omissions.**

Meeting Opened: Ms. Leclerc called the meeting to order at 7 pm.

Roll Call: Alternate Judy Trow agreed to fill in for the absent board member.

Minutes: Ms. Barnes made a correction on page three, section Appeal to Zoning Board section: change the word “want” to past tense and add the word “to.” Ms. Trow made a motion to approve the amended minutes. Mr. Murray seconded the motion and the motion carried.

Old Business:

Public Hearing for a Variance: Michael Nerrie – 507 March Hill Road – Map 11, Lot 59, Rural/Agricultural District - DADU – building is more than 150 feet and not more than 175 feet from the main structure. Structure is 900 square feet. Article IV – General Provisions O.

Mr. Nerrie wants to add a Detached Accessory Dwelling Unit to his property to build a home for a caretaker for Distant Hill. Distant Hill is a 125-acre garden and natural space that is usually open to the public. Distant Hill has nature-based classes and workshops and research projects as well as trails. The plans Mr. Nerrie presented at the September meeting changed slightly because of the need to relocate the septic system. The building is still within the 175 feet from the main house that the board agreed to last month.

Mr. Nerrie pointed out on the map where March Hill Road and the main house were and where the new building was going to be. He originally thought that because a corner of the building was within the 150 requirement, he did not need a variance. However, the board said the entire building must be within the 150-foot requirement. The original building site has been changed slightly because the septic engineer dug two holes and found them unsatisfactory for a septic system.

Following are Mr. Nerrie’s answers to five questions to the variance criteria and questions Mr. Nerrie answered after reading the comment.

The comments in italics are comments on each criterion from board members after the Public Hearing had been closed.

The proposed use would not diminish surrounding property value:

Being that the setback of the proposed DADU will be 100 feet from the nearest property boundary, that the building will be in keeping with the architectural style of the nearby home and outbuildings and that its construction will allow the owners to better maintain their property, the surrounding property values will not be diminished.

Ms. Barnes said I think there would be a strong public interest in having a public garden.

Ms. Trow said it supports keeping a large area as green space.

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

The construction and occupancy of a DADU on the property will allow the owners to better maintain their property and Distant Hill Nature Trail, a public wheelchair-accessible trail network on the property.

Mr. Nerrie said the building allows us to have a caretaker to reside on the property and help him take care of the property. There is a public garden and public nature trail on the 125 acres. The nature trail is open all year, seven days a week and it's getting to the point where Mr. Nerrie feels he won't be able to maintain it. He and his wife have friends who have a son, living in Pennsylvania, and the son wants to move back to New Hampshire where he has family. He's very capable and he's a woodworker, Mr. Nerrie said.

Mr. Murray asked if the caretaker would be on a payroll. Would it be commercial? Mr. Nerrie said no. There is no payroll. The land is going into conservation easement, which is almost completed, and Distant Hill is a nonprofit.

Mr. Sellarole asked if this means the caretaker gets free room and board. Mr. Nerrie said the arrangements haven't been worked out yet.

Ms. Trow said the site is not so far outside the requirements.

Ms. Barnes asked why the number 150 feet was determined in the ordinance. The purpose, Ms. Leclerc said, is to keep the new building as close to the main house so it's an accessory building as opposed to having a separate building somewhere else on the property and having two separate houses on the same property. Ms. Mansouri added there is an ordinance that says you can't have two homes on one lot.

Denial of the variance would result in unnecessary hardship to the owner:

Randy Rhoades of M&W Soils Engineering in Charlestown has examined the soils on the property and found no site completely within 150 feet of the main residence that would work for the proposed building and the required septic system except the one shown on the map.

Mr. Nerrie said without a variance, he can't build a house and he doesn't know how he would maintain the property in the future.

Granting the variance would do substantial justice because:

The location for the proposed building may be just outside the 150-foot maximum distance to the principle residence, but granting a variance would be just and fair, as it is the best, and only site recommended by the septic designer for the building.

Mr. Nerrie said the aerial view shows the space near the stone circle that is designated for the building. There is a fence and a garden between the main house and the building. The well, marked "W" on the map, is on the other side of the house from the septic system.

Mr. Sellarole asked if the application was complete. The answer was yes – certified letters had been sent to abutters and a public notice was in The Keene Sentinel on October 1, 2020.

Ms. Barnes said it would be otherwise a loss to the general public. Ms. Mansouri said it will not impede any neighbor.

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

The residents of the Town of Walpole voted to allow construction and occupancy of DADUs for just the proposed use of this building, fulfilling the spirit of the ordinance.

Mr. Sellarole asked, "When will you start building?" Mr. Nerrie said in the spring after the septic goes in. Mr. Nerrie was going to build a manufactured building but he didn't like the quality of the material. So, he said, he has asked a local builder to do the work.

Ms. Mansouri made a motion to accept the variance as presented and for the reasons that were in the explanation of the variance criteria. Mr. Murray amended the motion to include Nerrie getting a building permit and septic approval. Ms. Mansouri made a motion to accept the amended motion. Mr. Murray seconded the amended motion and the motion carried unanimously.

New Business: Cindy Westover. Ms. Westover did not come to the meeting.

Old Business:

Collect Gravel Pit Inspections Assignments: Cold River Materials – Board members turned in their gravel pit inspection forms. During the month of September, board members visited all four currently operating gravel pits in Walpole. They reported no problems at any of the gravel pits sites. The secretary will send a letter to all the gravel pit owners: Cold River Materials - Gary Patch and Eurovia; Graves Gravel pit on Wentworth Road - Tim Graves; Hodgkins gravel pit on Old Drewsville Road; and Cold River Bridges gravel pit, formerly Hodgkins, in the Industrial Park. Whipple Hill and Joe Sawyer's gravel pits were closed in October 2019.

Exempt signage. At the September meeting, the board discussed a list of exempt and temporary signage that might be added to the current Walpole Zoning Ordinances. The members chose the ones on the list to keep, changed a couple, eliminated some or put together others. They also looked at a few tweaks to current ordinances. The board approved the document.

At tonight's meeting Ms. Barnes wanted to add information from the NH Municipal Association about signage. It's based on a document titled "Municipal Sign ordinance after Reed vs. Town of Gilbert – Dos and Don't s. Ms. Barnes and Ms. Mansouri will work on combining information from both documents into one document that can be presented to and approved by the ZBA in November. Then it will be sent to the Walpole Planning Board for review in December and a public hearing held in January so it can be put on the 2021 warrant.

Short-term rentals: The Board unanimously voted to include short-term rentals to the "Bed and Breakfast" ordinance stated in Article IV, L of the Walpole Zoning Ordinances. Short-Term Rentals are commonly sought through such sites as Airbnb, Expedia and TripAdvisor.

The ordinance will now read in General Provisions Article IV, Section L. "Bed and Breakfast and Short-Term Rental Establishments. So called bed and breakfast and short-term rental establishments for the accommodation of paying, overnight guests may be maintained in all districts provided that the number of rooms for rent in any one establishment shall not number more than four, and that breakfast may be the only meal provided, and only to bona fide overnight guests. The conversion of a single-family residence or other building to a bed and breakfast or short-term rental establishment shall require Site Plan approval by the Planning Board."

This change to this ordinance now goes to the Walpole Planning Board for its review at its next regular meeting in November and for a Public Hearing in December.

Appeal of Signs at 8 Prospect Hill: Jim Jones of North Walpole asked the Select Board to ask the owners of 8 Prospect Hill to remove all the signs not for their content but "to prevent sight pollution in our village." The Select Board refused and Select Board member Peggy Pschirrer noted in a Select Board meeting that Mr. Jones could appeal their decision to the Zoning Board of Adjustment.

However, there are certain requirements of a person or persons making an appeal to the Zoning Board. According to Stephen C. Buckley, Legal Services Counsel at the NH Municipal Association, "If the Select Board refuses to take action to enforce an ordinance, and the complaining party had

standing, they can appeal that decision to the Zoning Board. However, not all citizens in towns have standing to appeal decisions by the Select Board on zoning enforcement questions. To be entitled to appeal to the Zoning Board of Adjustment a person must demonstrate that he/she is a "person aggrieved," by showing a "direct definite interest in the outcome of the proceedings." *Casperson v. Town of Lyme*, 139 N.H. 637, 640 (1995)."

Mr. Jones and the Chair of the Zoning Board, Jan Leclerc, have exchanged several emails with Mr. Jones still pressing the Zoning Board to appeal the Select Board's decision. But the simple fact is that the Zoning Board must abide by the legal opinion of Mr. Buckley. Mr. Jones does not have standing because he lives in North Walpole, a distance from where the signs are. If the ZBA board were to grant him an appeal, then someone with "standing" could not appeal to the board. More information on the matter of standing may be found in RSA 677:4 in a copy of "New Hampshire Planning and Land Use Regulation."

Ernie Vose update: Board member, Mr. Vose, had open heart surgery recently and board members have been concerned about his welfare. Here's a short note from Mr. Vose. "Hi, I am feeling pretty good but tired. I go to see my surgeon Friday and then I will be able to drive again. I will start pt in a couple of weeks. Everyone that has had open heart surgery recommends it highly. I now have a FitBit to watch my progress. I am trying to keep steps up to 10,000 per day. See you next month. Ernie

Respectfully submitted,
Marilou Blaine
ZBA Secretary

cc: ZBA, WPB, Town Offices, Walpolean.

Posted: Inside Town Offices, bulletin board outside Post Office, Walpolean, www.walpole.nh.us.