

Zoning Board of Adjustment Minutes
Wednesday, May 19, 2021
Zoom meeting
7 pm

Roll Call: Present by a roll call: Board Members: Chair Jan Leclerc, Vice-chair Myra Mansouri, Clerk Tom Murray, Pauline Barnes. Alternates: Judy Trow, Don Sellarole, Dave Edkins. Absent: Ernie Vose. Mr. Edkins was asked and agreed to sit in for the absent board member. Host for the meeting was Jeremiah Phaneuf.

Recording: Secretary Marilou Blaine. **This meeting is being recorded. These minutes are unapproved and will be reviewed at the June 2021 meeting for corrections, additions and/or omissions.**

Meeting Opened: Chair Jan Leclerc called the meeting to order at 7:07 pm.

Minutes: Ms. Barnes made one correction. Delete the word "is" on page 1, last paragraph. Tom made a motion to approve the amended minutes for the April meeting of 2021. Ms. Barnes seconded the motion and in a roll call vote the motion carried.

Old Business:

Two public hearings – Signage for Shaw's supermarket in North Meadow Plaza and signage for Edward Jones, 57 Main St. - were postponed until the June meeting. Marietta Burdick postponed until June her presentation for signage at BurdickGranada dba Jovay Chocolate, chocolate factory, 8 Huntington Lane. All are in the Commercial District.

New Business:

Signage from Federal government and contractors on Brownfield site in village, free-standing, 32 square feet. Commercial District. Select Board member Peggy Pschirrer presenting. Sign to be erected prior to start of construction. Template attached to the Specification Section.

Map 20, Lots 65 and 66, Commercial District.

Ms. Pschirrer introduced herself as the local project director for the Brownfield Cleanup of the Central Plating Site and described the sign as well as the project. The town's grant of \$500,000 from the Environmental Protection Agency requires that the town post a sign. It will be free-standing and remain up during the period of construction. Renovation of the site is expected to begin in mid-July. The town is in the process of seeking bids. Last week there were about 10 people looking at the site. It is the contractor who will pay for putting up the sign. (The sign was displayed on the screen.) It is a 4-foot-by-8-foot wooden sign and it is temporary.

The Environmental Protection Agency is very specific about what must go on the sign including what colors to use and the font. It indicates who is the EPA contact. Her name is in the top left-hand corner of the sign and the contact is Katy Deng in Boston. She is the person to whom Ms. Pschirrer will report. Michael McCluskey P.E. is the environmental person from the New Hampshire Department of Environmental Services on the project. The engineer is Jay Johnsonett P.E. of Ransom Consulting, LLC and when the town chooses a contractor that name will also appear on the sign along with the cost of the project, which is well over half a million dollars. All these names have telephone numbers for contact purposes. The total cost of the project will probably be close to \$700,000. The sign will remain up until the project is completed, which will probably be between the end of November or the middle of December.

Mr. Sellarole said he wasn't familiar with the site. Ms. Pschirrer said it's the place where that old red shack is visible from the Mascoma parking lot and it was a part of the Central Plating business. The shack is on the smaller piece of the two properties and it too has some contamination. It has a concrete floor. That building and the concrete will be removed. The bigger hole, which is fenced in and abutted by the parking lot, backs up to Dave and Ellen Adams home. Other abutters include Felicia Phillips and Jane Vesper, Walpole Foundation buildings - the Tavern and the Griswold house - and then Tom Murray's building. Mascoma Bank owns the parking lot and the town leases the lot from them. When the cleanup is completed the town will eventually expand the parking lot. The town is in desperate need of downtown parking, she said, and is negotiating with Mascoma Savings Bank to see if they'll donate the parking lot to the town. The bank has been supportive of the cleanup – signing waivers to allow the town on their property (the contaminated site is landlocked) and to test and clean up the site. The worst case scenario is about seven feet of dirt must be removed. Big equipment will be used to do the task. The companies are certified for this environmental project. The soil removed will be put in trucks and taken down the Mascoma driveway to Main Street because that's the simplest and most direct way or the trucks may also exit by Edward Jones.

Ms. Barnes asked if the replacement parking lot material would be permeable as she was concerned about runoff. Ms. Pschirrer said it would probably be asphalt and there would be about three or four stations for electric cars. Regarding runoff, Ms. Pschirrer said there would be proper drainage. However, at this time, there is no money yet for the parking space. When the town filed for the grant they mentioned the tightness of the area and that parking was needed in this area for commercial property and apartments.

Mr. Edkins interrupted and said we are not talking about the project, we are talking about the signage. Then he went on to ask about the cost of the project, which was "much higher" than the grant received. According to Ms. Pschirrer the money for the project is:

\$175,000 in escrow from the owners of the property, the Westbergs.
\$100,000 from the state.
\$500,000 from the EPA grant.

How far from Westminster and Main streets is the sign? Ms. Leclerc asked. Mr. Murray estimated it was about 150 feet from both streets. Ms. Leclerc asked and it was confirmed that the sign was in the commercial district. Ms. Leclerc began to say that the sign conforms to the ordinance and that she would like to make a motion when Mr. Edkins made a motion to approve the sign as submitted. Ms. Mansouri seconded the motion. Ms. Barnes said that she didn't think the Board was required to vote on it since it is a sign from a governmental agency "to help protect the health and safety of the general public. Mr. Murray said he thought this supersedes our ordinances and the Board should just approve it. Roll call vote was five yeses.

Peter King, 46 Dearborn Circle, the addition of a living to the home will mean that the house would not meet the requirement of 65-foot distance to the middle of the road. Residential B. Mr. King was not at the zoom meeting.

Signage: Justin Cassarino. Sign in front of the School. **Tax Map 22, Lot 4, Bemis Lane, Fall Mountain Regional School District, Commercial District.** Mr. Cassarino said that the staff in Walpole want to remember Mr. Sam Jacobs by putting up this sign. The sign would be a rectangle, 4-feet-by-8-feet, in front of the flagpole. It will be two-sided so it can be seen from both traffic directions. There will be a space to put messages on both sides to showcase and post current events. The messages will not be electronic but put in by hand. It will have a 1-inch aluminum frame and the post structures are pressure treated lumber to be put into the ground.

Mr. Jacobs has spent more than 41 years in the district with half of that time as principal of the two Walpole schools, Mr. Cassarino said. Mr. Jacobs is mentoring Mr. Cassarino who will become principal of those two schools. Ms. Leclerc asked how far the sign would be from the edge of the road. The zoning ordinance, Article IV, D-6, states that "in the Commercial and Industrial Districts signs shall be placed not less than sixty (60) feet from the edge of the traveled roadway." Mr. Cassarino didn't know but since he was at the school he could check now. Mr. Cassarino and the custodian went outside to measure the distance. It's exactly 60 feet to the flagpole from the road, but ideally in order to see it from the road, he would want the sign in front of the flagpole. If the sign were placed at the 60 foot distance, bushes would have to be removed and it would be right at the edge of the driveway in front of the school. Mr. Sellarole asked what was the preferred location. Mr. Cassarino said in front of the flagpole. Mr. Sellarole suggested Mr. Cassarino choose going for the variance because it was going to be placed in the preferred location. The sign would be up for a long time and the location is important. That would place the sign 35 to 40 feet from the edge of the road.

Mr. Edkins made a motion to waive the fee. Mr. Murray seconded the motion. Before the motion was voted on, it was pointed out that the application fee had to be paid for the required legal announcement of the public hearing that must appear in a local newspaper. Also, the abutter fees pay for the certified letters that are required and must be sent to every abutter. The Town would end up paying those fees. The abutter fee is \$8 per abutter and a certified letter USPS cost is \$7. Ms. Leclerc suggested it might be better not to change the way we do things and set a precedent for waiving fees. Ms. Leclerc asked for a vote on Mr. Edkins' motion. Board members Mansouri, Barnes, Murray and Leclerc voted no; Mr. Edkins voted yes. The motion failed. A motion was then made and seconded to hold a public hearing for the school sign at the June meeting, which will be an in-person meeting at the Town Hall and the motion carried. The secretary will send a variance application to Mr. Cassarino and he was asked to complete the application, pay the fees and submit the application by June 3.

Walpole's ordinance is called a Permissive Ordinance

Ms. Leclerc referenced a letter, written by Town Counsel Jeremy Hockensmith, regarding the type of ordinance the town has. That letter was sent to every Board member. Mr. Hockensmith said in the letter that Walpole has a permissive ordinance, which means that if something is not mentioned in the ordinance, then it is not allowed. Repeating that phrase Ms. Leclerc said if it is not specifically mentioned in the ordinance, it is prohibited unless the person has or gets a variance or a special exception. That tells me, Ms. Leclerc said, that the only short-term rentals allowed in Walpole at this time are Bed & Breakfasts, which go through a site plan review. People who are worried about our stopping them for having a short-term rental, shouldn't be because we will be creating an ordinance to allow them rather prohibiting them, she said.

Mr. Hockensmith wrote, "A noted NH zoning commentator has said, "(i)n the absence of a variance or special exception, a permissive ordinance functions generally to prohibit uses of land unless they are expressly permitted as primary uses or can be found to be accessory to a permitted use. Conversely, "(t)he opposite of a "permissive" ordinance is a so-called "prohibitory" ordinance which allows all uses not expressly prohibited. That commentator states: "most zoning ordinances in New Hampshire are of the so-called 'permissive' variety.

"As to the Walpole Zoning Ordinance, I have argued to the Superior Court on a handful of cases that it is of the permissive variety and I have never been challenged. It is my opinion that unless the plain language of the Walpole zoning ordinance specifically permits a use in the district, it must have a special exception or variance."

Short-term Rentals

Ms. Barnes asked if there had been any new responses to the survey. The Clarion and The Walpolean ran a survey asking for townspeople's input about short-term rentals. Everything was sent either in March or

beginning in April. Mr. Edkins asked if short-term rentals had become a problem and if not why does the Board need to make rules for problems that aren't there. Ms. Leclerc said suppose someone came along and complained. Short-term rentals are technically not allowed in the ordinance. Mr. Edkins said the Zoning Board shouldn't be doing anything, the Planning Board should be doing this, creating an ordinance. The ZBA is an adjudicatory body. The ZBA is not a regulatory body. If you really, really think this needs to be done, go to the Planning Board and tell them. It's not our job, Mr. Edkins concluded.

Ms. Mansouri said the Zoning Board has been through this situation before and in the end the Zoning Board ends up creating the ordinance. Mr. Edkins repeated if it's not a problem, why are we doing this? Ms. Barnes said it is considered to be a problem by many communities and it's something that requires some regulations. Mr. Hockensmith suggested that the Zoning Board get something in the ordinances about short-term rentals, Ms. Leclerc added.

Ms. Barnes asked if the Board should send out another solicitation before we discuss this at next month's meeting. Ms. Leclerc and Ms. Mansouri thought not. Ms. Trow said if someone is interested in short-term rentals they can come to the meeting. Ms. Barnes also said she sent two emails about short-term rentals to Board members. One was about short-term rentals and the taxes and fees that B&Bs and hotels have to collect, known as rooms and meals tax. The legislature is considering how they can make sure this is also done for short-term rentals as well as for common use cars. Also Vermont, Barnes said, is debating restricting short-term rentals to principal residents only and considering a registry for rentals. Ms. Mansouri said she wouldn't compare New Hampshire to Vermont and she would prefer to put in something to benefit Walpole. Ms. Barnes said the NH Legislature is also considering legislation, which would make it lot easier for towns.

Barnett Hill letter

At the April meeting the Zoning Board received an unsigned letter complaining about a property that had "gotten out of hand" on Barnett Hill. Since the ZBA shouldn't comment on a problem unless it is part of an appeal to the Board, the letter was given to the Select Board. There was a mention of the letter in the Select Board minutes dated April 29, 2021. Mr. Dalessio stated in the minutes that the Select Board "had hoped the ZBA would establish an ordinance to deal with properties such as this one, but they did not." Since the letter was unsigned, the consensus of the Select Board was "to file it."

At tonight's meeting Ms. Leclerc brought up the comments about the letter in the Select Board minutes. She said that the ZBA could not comment on the letter because if there were ever an appeal regarding the letter, the Zoning Board would not be able to hear the appeal because it had commented on the matter beforehand. Also, the Select Board is the enforcement arm of local government.

Ms. Trow said she thought the Select Board should be told about the role of the Zoning Board that the ZBA can not comment on items that need to be enforced. It's the Select Board's job, not the Zoning Board's job. Ms. Mansouri suggested that she and the chair go to a meeting and discuss it with the Select Board. Ms. Trow suggested the Select Board should read the RSA regarding the role of the zoning board. A visit would help them better understand what we can and cannot do. Mr. Edkins said this is an enforcement matter and that's up to the Select Board. Ms. Leclerc said the Select Board can determine if a violation has been made and if a violation has been made, they do something about it. If the Select Board tells the person he/she violated something and that person doesn't agree, they can come then to the ZBA saying that the Select Board is wrong and present their case to us. Then we can get involved, but not until then.

Short-term rental ordinance

Ms. Leclerc suggested that she would prefer to discuss this topic at an in-person meeting, so she would like to defer the discussion on short-term rentals until next month when the Board meets in the Town Hall.

Mr. Edkins repeated that the ZBA should not be writing an ordinance. The Zoning Board is to interpret the law, not create an ordinance. That is what the Planning Board should be doing. Ms. Leclerc said she consulted the NH Municipal Association about the matter and they said that the board could do what they are doing - drafting an ordinance for short-term rentals, which will then go to the Planning Board for a public hearing.

Next meeting

The next meeting on June 16 is an in-person meeting at the Town Hall. Jeremiah Phaneuf feels confident he can create a connection with the presenter of the Shaw's signage, who will be in Westbrook, ME. Masks are required.

Mr. Sellarole made a motion to adjourn. Mr. Murray seconded the motion. After a roll call vote, the motion carried.

Respectfully submitted,

Marilou Blaine

ZBA Secretary

Posted: Inside Town Offices, on bulletin board outside Post Office, The Walpolean, www.walpolenh.us

cc: ZBA, WPB, Town Offices.