ZONING BOARD OF ADJUSTMENT
May 28, 2015

The meeting was called to order at 7:00 p.m.

Roll Call: Larry Ordway, *Chair*
Timothy Fisher, *Vice Chair*
James Allen
Paul Boniface
Peter Bealo

Approval of Minutes

✶ P. Bealo moved second by L. Ordway to approve the minutes of the April 30, 2015 meeting. There was no discussion on the motion. The vote was 3-0-2 (Fisher and Boniface abstaining).

#15-06: A request from Nick Pichowicz Realty, LLC for a variance from Article IV, §220-21 to permit a structure to be constructed within 16 feet of the wetlands where the first 25 feet is a no disturb and the next 50 feet is a no structure buffer. The property is located at 24 Chandler Ave, Tax Map 25, Lot 29 in the MDR District. The applicant is the property owner of record.

#15-07: A request from Nick Pichowicz Realty, LLC for a variance from Article V, Table 220-32I to permit a structure to be constructed within 20.5 feet of the property line, where 35 feet is the minimum required. The property is located at 24 Chandler Ave, Tax Map 25, Lot 29 in the MDR District. The applicant is the property owner of record.

Charlie Zilch, SEC and Associates and Nick Pichowicz, property owner, were present for the application.

C. Zilch noted the following about the property:

- The owner would like to add an addition to the existing building
- The property is 7.69 acres with 265 feet of frontage on Chandler Ave
- There are currently two structures located on the property; a single-family dwelling and an auto repair facility
- The property is serviced by on-site well and septic

L. Ordway recalled there had been past issued with run-off from the abutting plaza (Plaistow Center 3-9 Plaistow Rd).

N. Pichowicz noted that this has been resolved for the most part.

- There is parking to support both the residential and business use on the property
- The footprint of the business is not intended to change
- The structure pre-dates current zoning setback restrictions.
- The existing structure is 14.7 feet to the southeast property line and 18.7 feet to the east property line
- The proposed structure would be 21 feet from the wetlands buffer

C. Zilch approached the Board and pointed out the existing features on the plan as well as where the proposed addition would be. He also gave an explanation of the types of wetlands that were on the property. He noted that the structure was upslope from the existing wetlands.

- It was noted that the intended use of the addition would be for a personal workshop for the property owner.
- The only access would be through the existing building
- The existing structure is 2375 sq ft
- There are two (2) variance requests; one for not meeting the structure setback of 35 feet; the other is for not meeting the 75 foot wetlands buffer setback
- The proposed addition would not encroach and further into the wetlands buffer than the existing structure
- The existing residence faces Chandler Ave

L. Ordway asked why they wanted the addition where proposed instead of building another structure that could comply.

C. Zilch replied that it would allow for use of the existing septic; well and the bay door.

P. Boniface asked if the Planning Board would be reviewing this plan should the application be approved. It was confirmed that Mr. Pichowicz would have to make application to the Planning Board to review it as an amendment to the Site Plan.

L. Ordway noted the proposed use was for personal and hobby use. He asked where Mr. Pichowicz was doing his hobby use now.

N. Pichowicz answered at his residence, which is at 3 Duston Ave.

L. Ordway asked why he wanted to move the use.

N. Pichowicz replied to have additional space to work.

C. Zilch added it would also give him access to his full complement of tools.

C .Zilch noted they had been to the Conservation Commission (ConCom) and received a favorable letter.

L. Ordway asked how much land was classified as “poorly drained soils.”

C. Zilch responded that 8,000-9,000 sq ft.

The letter from ConCom was read for the record.

There was a brief discussion of the location of a tank on the property.

C. Zilch went through the 5 criteria for the granting of a variance with the Board. The first discussion was with reference to the Wetland Variance request:

- There was nothing contrary to the Public Interest because there would be no increase in runoff to the wetlands since the wetlands are upslope from the proposed structure

P. Bealo offered that he didn’t see how the proposed addition did not increase the use of the site.

C. Zilch replied that it didn’t increase the business use; there will be no additional employees.

L. Ordway asked if Mr. Pichowicz owned the site, he confirmed that he does.

- There is nothing contrary to the spirit and intent of the ordinance because the wetlands are upgrade, there will be no runoff impact.

L. Ordway noted that the key point to him was that the wetlands are upgrade from the structures.

- There is substantial justice in granting the application as it will provide a cost effective way for the applicant to have space for his hobby
- There will be no impact to the surround property values as the small addition is for personal use only and there will be no increase to traffic or noise.
- There is a hardship in the property because the site, though large in size, has several wetlands located throughout. Access to areas to locate a stand-alone building to meet the building setbacks would most likely require disturbance within those buffers. Location of a stand-alone structure would also mean greater site disturbance, increased costs and no appreciable gain to the protection of the wetlands.

C. Zilch also went through the five (5) variance criteria with reference to the building setback variance request:

- The variance is not contrary to the public interest because granting the variance would give the applicant full productive use of his property by the construction of an addition that will not encroach any further than the existing building. The proposed addition is also remotely located from all abutters

There was discussion about how close the building would be to any abutters. It was noted that the proposed addition would be between 300-500 feet from the Plaistow Center Plaza.

- The application is not contrary to the spirit and intent of the ordinance because there will be no further encroachment into the setback than the current structure. It was also noted that no abutting buildings could be located close to the lot line because of significant existing wetlands areas on each lot. Therefore there would be separation of structures.

There was discussion of a 6” drainpipe located on the Plan. It was noted that when there is heavy rain there may be puddling on the property, but no flooding. Mr. Zilch added there was no evidence of scouring or ditch lines on the property, which would be indicative of flooding issues.

- There would be substantial justice in granting the variance because it would allow the applicant a cost effective means of achieving his goals with the least amount of disturbance to the site or disruption of his business and surrounding properties, avoiding significant impacts and disruptions elsewhere on the property
- The surrounding property values would not be diminished because this is a small addition for personal use to an existing automotive repair facility, which has already been operating for twenty-five years. The addition will not increase site use, septic loading, noise or traffic. There will be no negative impact to the wetlands either
- The proposed addition is limited in its location to the rear of the building within the 35 foot setback. Any addition to the south side of the building would require greater relief from the lot line setback and any addition to the north side of the building in prohibited by the location of the shared septic. Construction of a separate building would require much greater disturbance of site, increase costs and any appreciable gain with respect to the lot line would be offset by decreased wetlands buffer protection. The hardship is in the location of the existing building and the lack of a reasonable alternate location

L. Ordway asked if Mr. Pichowicz owned the entire property or just the business. It was confirmed that he owns the entire parcel.

L. Ordway asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of or in opposition to the application. There was no one and the matter was closed.

L. Ordway suggested that due to the amount of information in these applications that the Board consider and vote on them while everything is still fresh in their minds.

#15-06: A request from Nick Pichowicz Realty, LLC for a variance from Article IV, §220-21 to permit a structure to be constructed within 16 feet of the wetlands where the first 25 feet is a no disturb and the next 50 feet is a no structure buffer. The property is located at 24 Chandler Ave, Tax Map 25, Lot 29 in the MDR District. The applicant is the property owner of record.

✯P. Bealo moved, second by T. Fisher to approve the request for a wetlands buffer variance from Article IV, §220-21 for 24 Chandler Rd, as noted in the legal notice.

L. Ordway summarized the application noting the following:

- The affected wetlands buffer is uplands from the proposed addition
- There is some water flow though a 6" conduit that flows to a manmade wetlands area
- In the last twenty-five years there has not been an overflow that the pipe couldn't handle
- There is a letter from ConCom in support of the application

P. Bealo noted that he is not comfortable saying the application is not contrary to the public interest. He added that he understands that ConCom is okay with the plan and the 6" pipe is already in the wetlands, but it is his opinion that there is already very good use of the property with the residence and the established business uses.

There was no additional discussion on the motion. The vote was 4-1-0 (Bealo dissenting).

#15-07: A request from Nick Pichowicz Realty, LLC for a variance from Article V, Table 220-32I to permit a structure to be constructed within 20.5 feet of the property line, where 35 feet is the minimum required. The property is located at 24 Chandler Ave, Tax Map 25, Lot 29 in the MDR District. The applicant is the property owner of record.

✯T. Fisher moved, second by L. Ordway to approve the request for a property line setback variance from Article V, §220-32I for 24 Chandler Rd, as noted in the legal notice.

L. Ordway summarized the application noting the following:

- The application is to be 20.5 feet from the property line with an addition. The existing structure is already located 18 feet from the property line
- There is already full productive use of the property with the previously approved structure 18 feet from the property line
- There is no gain to the applicant that is offset by a loss to the general public
- Other locations on the site may serve to intrude greater on other wetland areas on the property

There was no additional discussion on the motion. The vote was 5-0-0 U/A.

CONTINUED FROM APRIL 30, 2015
#15-05: A request from ProQuip, Roger LaJoie, President for a variance from Article V, Table 220-32A to permit a Retail Use in the Industrial District. The property is located at 22 Old Rd, Tax Map 29, Lot 40 in the I1 District. Torromeo Industries, Inc is the property owner of record.

Charlie Zilch, SEC and Associates and Chris Barisano, ProQuip, were present for the application.

C. Zilch noted the following in support of the application:

- The request is to allow a retail use, which is not allowed under Table 220-32A
- The property is 22 Old Rd, May 29, Lot 44 the current location of Senter Bros
- The lot is 11.3 acres with 149 feet of frontage on Old Rd in the Industrial 1 District
- There is a professional office building and a contractor's building currently located on the site
- Senter Bros has ceased operations and ProQuip is in the process of cleaning up the site for their use
- The Planning Board allowed ProQuip to start the approved industrial use of the property pending Zoning Board approval of the retail (rental) use of the site
- The proposed retail use if rental of large and small scale construction equipment
- The site will also be used for the maintenance and storage of the rental equipment
- ProQuip currently has operations in Chichester and Gorham New Hampshire and they would like to establish a site in the southern part of the state
- They are currently using this a contractor's yard, without rentals, to support their other two locations
- The Planning Board has conditionally approved their amended site plan pending the outcome of the variance application
- The site is attractive to the business because of its proximity to Massachusetts
- There is already a commercial use in this Industrial District (Moynihan Lumber)
- The established site offers excellent parking and storage for the proposed business use
- There will be no changes to the site at this time, other than cleaning it up
- There is excellent access to Route 125 which will be enhanced once the proposed Service Road is built
- The site is where several zones and the property is abutting by commercial uses
- The proposed use is less intensive than the current use and will be in keeping with the varied zoning of the area

L. Ordway asked what kind of rental equipment ProQuip offered.

C. Barisano replied that it was mostly heavy construction equipment such as excavators, more for the contractor than the average homeowner.

L. Ordway noted that there was already retail uses on Route 125 and at Moynihan Lumber.

It was noted that Moynihan Lumber is a grandfathered pre-existing commercial use in the Industrial 1 District.

C. Zilch went through the five variance criteria for the Board noting the following:

- There will not by anything contrary to the public interest because adding the additional retail use will allow ProQuip full productive use of the property. The site will be utilized similarly to a contractor's yard for which the Industrial District is intended while allowing for the less intensive retail use to be incorporated

J. Allen asked if there would be trucks turning right out of the site to use Main St.

C. Zilch replied that they would not; they would be turning left to use Route 125 and would use the Service Road once it is built.

P. Bealo questioned how the Board could be certain that they would.

- The application is not contrary to the spirit and intent of the ordinance because the addition of the less intensive use will not negate the existing allowed industrial use. The site will retain its unique industrial zoned qualities. The additional use is also in keeping with use of similarly zoned abutting properties
- There is substantial justice in granting the variance because ProQuip will be able to fully benefit from the changing character of this zone. The proposed Service Road will enhance access to the site as well as all the abutting commercial zone. The additional retail use can be incorporated without any negative impact. The justice is in allowing flexibility to ProQuip for their unique use
- The surrounding property values will not be diminished because the proposed use is less intensive than the previous established use. The proposed use will be similar to the former use in respect to the types of vehicles that will be on the site, but there will be no need for the stockpiling of aggregate materials on the site which will mean less dust, runoff and site disturbance. Traffic will also be reduced as all nearly all business is conducted by phone or by internet and there is negligible customer use of the site. ProQuip will also be improving the site by updating and modernizing the building and improving the overall site appearance
- The denial of the variance would severely limit the use of the site in a zone where mixed uses can and have been incorporated in harmony with the surrounding diversely zoned sites. The proposed retail use is in keeping with the neighboring industrial zoned Moynihan Lumber, but us much less intensive. Denial would be an unnecessary hardship because of the uniqueness of this zone that is not available elsewhere that supports this proposed use as well.

L. Ordway asked if the Board had any additional questions, there were none.

L. Ordway asked if there was anyone speaking in favor of or in opposition to the application. A letter from the Plaistow Planning board in support of the application was read into the record. There was no additional comment and the matter was closed.

CONTINUED FROM APRIL 30, 2015
#15-05: A request from ProQuip, Roger LaJoie, President for a variance from Article V, Table 220-32A to permit a Retail Use in the Industrial District. The property is located at 22 Old Rd, Tax Map 29, Lot 40 in the I1 District. Torromeo Industries, Inc is the property owner of record.

✶P. Bealo moved, second by T. Fisher to approve the request for a retail use variance from Article V, §220-32A for 22 Old Rd, as noted in the legal notice.

L. Ordway summarized the application noting the following:

- The property is centered between Route 125 and Moynihan Lumber
- Most of the retail business is conducted on the phone or over the internet
- The applicant has plans to make improvements to the site
- The site will also be used for the maintenance of the rental equipment

There was no additional discussion on the motion. The vote was 5-0-0 U/A.

There was no other business before the Board.

The meeting was adjourned at 8:07 p.m.

Respectfully Submitted,

Dee Voss, Administrative Assistant