Town of Plaistow, New Hampshire
145 Main Street, Plaistow NH 03865
Phone: (603) 382-8469

ZBA Minutes 05-29-14

ZONING BOARD OF ADJUSTMENT
May 29, 2014

The meeting was called to order at 7:02 p.m.

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

P. Bealo was appointed as a voting member for this meeting.

Minutes of April 24, 2014 Meeting

L. Ordway moved, second by J. Allen, to approve the minutes of the April 24, 2014 meeting. There was no discussion on the motion and the vote was 3-0-2 (Boniface and Bealo abstaining).

#14-05: A request from James & Brenda Hailson for a variance from Article IV, Table 220-21 to allow a shed to be located in the wetlands buffer, 29 feet from the edge of wetlands. The property is located at 3 Massassoit Blvd, Tax Map 38, Lot 21 in the MDR District. The applicants are the property owners of record.

James and Brenda Hailson, 3 Massassoit Blvd, were present for the application.

J. Hailson explained that they would like to replace their existing Quonset Hut with a 12' X 14' permanent shed from Post Woodworking. He noted that they were seeking to set the shed 29 feet from the edge of wetlands.

Pictures of the existing conditions were presented to the Board.

There was discussion regarding the Hailson's lot noting the following:

- The was a 10 foot drop off on the property preventing placement of the shed in another location
- The small brook was dry 60%-70% of the year
- The source of the brook is street runoff
- The shed is intended to be placed on cement blocks
- There will be no more intrusion into the wetlands than there was with the Quonset Hut
- There will be no storage of hazardous materials/chemicals, including gas cans, in the shed
- The intended use of the shed is for the storage of lawn furniture

L. Ordway asked if the Board had any additional questions, there were none. He asked if anyone was speaking in favor or, or in opposition to the application. It was noted there was a letter of support from the Conservation Commission. There was no additional input and the matter was closed.

#14-06: A request from Kimberly Beaulieu for a special exception under Article X, All Sections, to permit a home occupation, namely a dog daycare. The property is located at 32 North Ave, Tax Map 36, Lot 12 in the LDR District. Kimberly Beaulieu and Michael DiMarzo are the property owners of record.

#14-07: A request from Kimberly Beaulieu for a variance from Article X, §220-67.C, to permit a home occupation to use a building that is not the residential dwelling. The property is located at 32 North Ave, Tax Map 36, Lot 12 in the LDR District. Kimberly Beaulieu and Michael DiMarzo are the property owners of record.

Kimberly Beaulieu and Tim Benson, business partners, were present for the application.

T. Benson explained that they would like to open a dog day care at the noted property. He noted that following information for the Board:

- K. Beaulieu has 10+ years of experience as a veterinary assistant
- Both has experience as dog walkers
- They know CPR vet care
- They would like to use the existing greenhouse, or a new prefab as part of the business
- They would be installing a 6-8 foot high fence
- The greenhouse is located approximately 150 feet from the home
- This would not be for kenneling, but for people who work during the day
- They would like to have 30 dogs
- Hours of operation would be from 6:00 a.m. to 7:00 p.m.
- The dogs would be kept indoors from 6:00 a.m. to 8:00-9:00 a.m.

L. Ordway asked how they intended to control the noise.

T. Benson replied that they are surrounded by natural forestry; are set back 150 feet from the road; and are at least a football field away from any abutter. He added that if the dogs are kept active and away from visual stimuli they don't have reason to bark.

L. Ordway questioned if they intended to live on the site and how long they had owned the property.

K. Beaulieu answered that she does live there and has for about a year.

T. Benson offered pictures to the Board. He noted that gas line and that no abutters houses could be seen in any of the pictures.

J. Allen asked how waste would be disposed of.

T. Benson noted options such as composting with lime to control odors. He added there was also the option of having a company come and remove the waste.

T. Fisher asked if there were any wetlands that may be affected by that many dogs urinating.

K. Beaulieu noted that there were some wetlands in the front of the house.

T. Benson added that the wetlands where on the street side of the house and that all solid waste would be immediately cleaned up.

T. Fisher questioned how food supplies would be stored and maintained to be protected from rodents.

K. Beaulieu responded that food would be brought each day by the dog's owners.

T. Benson added that there was no intent to store or sell food.

J. Allen asked if there would be any trucks or deliveries. It was confirmed there would not be.

T. Fisher expressed concern over the amount of traffic that would be generated by 30 dogs being dropped off and picked up daily.

K. Beaulieu noted that North Ave was already a busy road and she didn't think this business would have an impact.

T. Benson offered that they would also like to provide in-home care for dogs.

L. Ordway noted that when he visited the site he did find it difficult to turn around to head out of the driveway.

K. Beaulieu pointed out a turnaround in one of the pictures.

L. Ordway offered that he found it difficult and asked if there were plans to make it larger.

T. Benson suggested they could offer pick-up service to minimize the traffic impact.

There was discussion about the worst case scenario being that there would be thirty dogs there at one time and the greenhouse, or other pre-fab building, would be used to house the dogs in inclement weather. It was noted that they were not looking to take on bad dogs and would have a screening process for them.

P. Boniface asked if there would be individual kennels for the dogs outside.

K. Beaulieu replied that there would be multiply separate fenced in areas to segregate the dogs. The example would be that puppies would be fenced together and away from the larger breeds of dogs.

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

Michelle Lampron, 28 North Ave, stated that she was in opposition to the idea of a dog daycare for the following reasons:

- The noise would be a big issue for her as a direct abutter.
- The more dogs, the more barking
- There are surrounding homes with dogs that could be encouraged to bark with the presence of a dog day care
- She has consulted with a real estate agent who has informed her that her property value would decrease with such a business operating next door and prospective buyers would be turned off by the number of dogs
- She felt it was a safety issue not knowing what the temperament of the dogs could be, especially since she is a stay-at-home mom of three (3) children
- There is concern of the amount of waste there would be and if it would cause an odor that she would be able to smell, especially in the summer time
- She has concerns of the urine of 30 dogs impacting the wetlands and her well
- She had concerns for the additional traffic on their already busy street

L. Ordway asked two (2) more times if there was anyone speaking on favor of or opposition to the applications. He offered the applicants a chance to rebut and/or address Ms. Lampron's concerns.

T. Benson and K. Beaulieu noted that following as rebuttal:

- There should be an odor issue because they would be treating the waste with lime
- All the fenced in areas for the dogs would be at least a football field's distance away from Ms. Lampron's property
- They had been to other dog daycares and because the dogs were well treated noise wasn't an issue

- The yard isn't even visible because it is lined with everygreens

L. Ordway asked if anyone had anything additional to offer. There was no one and the matter was closed.

CONTINUED FROM APRIL 24, 2014
#14-03: A request from William Joray for a variance from Article V, Table 220-32E to allow a single family lot with less than the minimum 150 feet of frontage. The property is located at 8 Maple Ave, Tax Map 41, Lot 29 in the MDR District. The parcel to be created would front on Witch Lane. The applicant is the property owner of record.

T. Lavelle, Lavelle Associates, and William Joray, property owner, were present for the application.

T. Lavelle offered that following:

- The application proposes to combine two (2) lots for a total of 5.87 acres
- The lots would then be subdivided into three (3) lots of 3.46 acres, 1.0 acres and 1.4 acres
- The new 1.4 acre lot would front on Witch Lane, where there is 51.98 feet of frontage, which doesn't meet the minimum requirement
- The other two lots would be compliant with current zoning
- If the variance is granted they would do test pits and other engineering work, then proceed to the Planning Board for the subdivision
- The 3.46 acre lot has a four-unit structure on it and requires four times the minimum lot sizing
- The other two (2) lots would exceed the minimum lot sizing requirement of 40,000 sq ft

The Board reviewed the plan that was submitted as part of the application. It was noted that the access to the third lot would be from Witch Lane and the other two (2) lots would continue to front on Maple Ave. The intent would be to install at 20 foot wide driveway, with 15 feet on either side, which would meet minimum driveway setback requirements.

There was review and discussion of the abutting houses on Witch Lane. It was noted that the closest structures would be between 100-150 feet away from the proposed location of a single-family dwelling that could be put on the newly created lot.

It was noted that the driveway would be approximately 300 feet long and the house would be set in a wooded lot.

T. Lavelle noted that the Planning Board will require him to show any wetlands and the types of soils are part of his subdivision plan.

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

Madeline Marcotte, 165 Main Street, offered that she had endured much when Mr. Joray built his house on Maple Ave and didn't want to have to go through something like again. She noted there were trucks coming and going all day long for weeks. She did note that Mr. Joray does keep his property very nicely, but she still didn't want to go through all that again to make the proposed lot suitable for building.

M. Marcotte listed additional concerns:

- Air quality with trucks bringing in materials
- Increase in traffic
- Disturbing of the wetlands
- Water quality
- Mr. Joray currently mows his lawn at very early hours
- Respect of the land

- Wellbeing of the neighbors
- Land being filled in an possible runoff

L. Ordway noted that it would be difficult to attribute all the noise pollution on Main Street to this project.

Aram Zakain, 21 Witch Lane offered his concerns noting the following:

- Medium Density requirements call for 150 feet of frontage for separation between lots
- His property is wet nearly 300 days a year and his sump pump is constantly operating, would building on this property increase runoff to his own
- This would be completely non-conforming with the rest of the neighborhood

Rebecca Hasbrook-Guthrie, 13 Witch Lane offered her concerns noting:

- There was a concern for increased runoff to her property as she already has water issues
- Would the cutting down on trees to clear for a driveway and to build the house cause additional runoff as there would be nothing to stop the water
- She noted that her yard is so wet at time that ducks can swim in her yard
- She was concerned over whether or not her yard would be livable if this parcel is developed

Dennis Marcotte, 165 Main St commented:

- He questioned where the house would be placed. A general area was shown on the plan

L. Ordway noted that the application was for lack of frontage, not for the development of the parcel.

D. Marcotte suggested that the reputation of the man involved, as well as what happened previously, should be a consideration. He expressed frustration that he felt he wasn't able to speak his mind at this meeting.

L. Ordway reminded that the issue that the Board was to be reviewing was the lack of 150 feet of frontage, which is the minimum requirement when creating a new lot. He noted that he understood that the abutters had other issues and concerns from previous development, but the Board was only to consider the application for the frontage variance. L. Ordway noted that some of the issues being raised would be better address at a Planning Board meeting, should this application go forward.

D. Marcotte continued noting:

- He felt that Mr. Joray had an unfair advantage when he initially purchased the property, which he didn't feel was properly noticed at the time
- Mr. Joray was allowed to considerably build up the property at the time he was building the structure(s) which caused many of the water issues that the abutters are currently experiencing

L. Ordway reiterated that the issues that were being expressed were better to be brought to the Planning Board if the application were to move forward.

Renee Zakain, 21 Witch Lane, offered that following concerns:

- People purchased their properties expecting that the ordinances would be upheld and allowing a lot with only 1/3 of the required frontage would be setting a dangerous precedent

Spencer Robie, 19 Witch Lane offered the following in opposition:

- He was opposed because the effect this would have on the wetlands
- Mr. Joray has already filled in much of the wetlands over time and does what he wants, paying the fines afterwards
- Concerns with additional water runoff if the new lot needs to be brought up
- He noted that his house and the Zakian property get the worst of the current runoff problems

L. Ordway repeated that these issues were for the Planning Board's consideration, not to be addressed by the Zoning Board, which was only to consider the lack of frontage.

It was noted that should this application move forward all abutters would again be notified as part of the Planning Board review process.

L. Ordway asked if there was anyone else speaking in opposition. There was no one. He asked if the applicant would like to offer a rebuttal.

T. Lavelle offered that the water from any proposed driveway would be addressed with the Planning Board, who would require comprehensive wetlands mapping, soils evaluations and test pits. He reminded that they were here for the lack of frontage. He noted that many of the existing lots on Witch Lane are +/- 100 feet, less than the required frontage. T. Lavelle closed with the combined parcels were almost 6 acres and this would be just one more house.

L. Ordway, noting there was no further input, closed the matter.

The chairman called for a break at 8:23 p.m. The meeting was called back to order at 8:33 p.m.

DELIBERATIONS

#14-05: A request from James & Brenda Hailson for a variance from Article IV, Table 220-21 to allow a shed to be located in the wetlands buffer, 29 feet from the edge of wetlands. The property is located at 3 Massassoit Blvd, Tax Map 38, Lot 21 in the MDR District. The applicants are the property owners of record.

L. Ordway read the legal notice posting for the application.

P. Bealo moved, second by L. Ordway, to approve the application as it was legally noticed.

L. Ordway summarized the application noting the following:

- The shed would be replacing an existing Quonset Hut and would have a smaller footprint
- The land has a dramatic drop off of about ten (10) feet to a seasonal brook
- The water that feeds the seasonal brook is from street runoff
- There are no other suitable areas for placing the shed because of the drop

The Board reviewed the criteria for the granting of a variance, noting the following:

- It Is not contrary to the Public Interest and the shed will be more esthetic than a Quonset Hut
- The water shed would be adequately protected by the 29 feet of separation, especially since nothing hazardous would be stored in the shed
- There would be substantial justice in that the wetlands are adequately protected and the Hailson's can still have a shed
- Property values would not be diminished as a shed is preferable to a Quonset Hut
- There is a hardship in the land in the way the land severely drops off

T. Fisher reminded that the shed would be on cinder blocks

P. Boniface reminded that they had the support of the Conservation Commission.

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

#14-07: A request from Kimberly Beaulieu for a variance from Article X, §220-67.C, to permit a home occupation to use a building that is not the residential dwelling. The property is located at 32 North Ave, Tax Map 36, Lot 12 in the LDR District. Kimberly Beaulieu and Michael DiMarzo are the property owners of record.

L. Ordway read the legal notice for Kimberly Beaulieu's variance application.

T. Fisher moved, second by J. Allen, to approve the application as noted in the legal notice.

L. Ordway summarized the application noting the following:

- There is a greenhouse style building locates in the back of the property that the applicants would like to use to house dogs, being cared for at a dog daycare, inclement weather
- There is a possibility of building a more permanent structure with fences to isolate the building from the abutters

The Board reviewed the criteria for the granting of a variance noting the following:

- There is no benefit to the public interest, only to the interest of dog owners
- Noise pollution could be a problem as this property is located in a residential area
- Location in the LDR is not suitable for a dog daycare. The Commercial I or Integrated Commercial Residential Districts would be more suitable
- Spirit of the ordinance would not be observed as this is a residential district and the business as described goes beyond what is reasonable for a residential district
- The presence of thirty (30) or more dogs could have an adverse affect on surrounding property values
- There is no hardship in the land as there is a residential use of this residentially owned property

There was no additional discussion on the motion. The vote was 0-5-0 and the motion to approve the variance application was defeated.

#14-06: A request from Kimberly Beaulieu for a special exception under Article X, All Sections, to permit a home occupation, namely a dog daycare. The property is located at 32 North Ave, Tax Map 36, Lot 12 in the LDR District. Kimberly Beaulieu and Michael DiMarzo are the property owners of record.

L. Ordway read the legal notice for Kimberly Beaulieu's special exception application.

T. Fisher moved, second by J. Allen, to approve the application as noted in the legal notice.

L. Ordway summarized the application noting the following:

- It was noted on the application that the office space would be +/- 4% of the living space, but that the majority of the business would be outside

The Board reviewed the criteria for the granting of a special exception for a home occupation, noting the following:

- Perhaps this would fit under the personal services category

- The use of the property by 30 dogs could prove to be an offensive use with noise and fumes
- The office space would be +/-4%, well within the requirements for a home occupation
- The residential character of the dwelling could be an issue with the intended size of the business operations
- There was no mention of a sign in the discussion
- The business would be owner-occupied with a non-residential business partner
- No merchandize display
- There was sufficient off-street parking, while there is a little trouble with turning around to head out of the site
- There is nothing contrary in the deed
- This is not a condo, so no authorization from a home owners' association is needed

P. Bealo offered that in reviewing the list of permitted home occupations he noted that they are all small scale and the number of customers is restricted in some cases to keep it small. He added that the he doesn't see how the scope of this size operation fits in with a home occupation.

L. Ordway added that even if there are only five (5) dogs, noise and waste are issues.

There was no additional discussion on the motion. The vote was 0-5-0 and the motion to approve the special exception application was defeated.

CONTINUED FROM APRIL 24, 2014
#14-03: A request from William Joray for a variance from Article V, Table 220-32E to allow a single family lot with less than the minimum 150 feet of frontage. The property is located at 8 Maple Ave, Tax Map 41, Lot 29 in the MDR District. The parcel to be created would front on Witch Lane. The applicant is the property owner of record.

L. Ordway read the legal notice for William Joray's variance application.

T. Fisher moved, second by P. Boniface, to approve the application as noted in the legal notice.

L. Ordway summarized the application noting the following:

- There was a lot of input from neighbors on Witch Lane over water (runoff) and wetlands concerns
- They had additional concerns that Mr. Joray would have to bring in fill to raise up the parcel, which caused problems when Mr. Joray did it for his own home
- The issue before the Board is to review a nearly 100 foot variance request which is 2/3rds of the required minimum frontage

The Board reviewed the criteria for the granting of a variance, noting the following:

- The Public's Interest is in sufficient spacing between houses and people not living on top of one another. Any house on this lot would be sufficiently set away from other structures
- The size of the variance request is contrary to the spirit of the ordinance, regardless of where the house is set

T. Fisher expressed concern that granting this variance would be precedent setting

- There is substantial justice in allowing the owner use of his property, which he already has. The size of the variance is just too much

P. Bealo noted that there was justice in protecting the houses that this property runs behind, many of which had expressed concern over potential increase in their water issues.

- There could be potential damage to the value of surrounding properties if the wetlands flow is disturbed but cutting a driveway through in such a small frontage
- The property is already being residentially used and there is no hardship that would prevent that use to continue. The only hardship is a financial one in that an extra lot is not being created.

There was no further discussion on the motion. The vote was 0-5-0 and the motion to approve the variance application was defeated.

There was no further business before the Board. The meeting was adjourned at 9:09 p.m.

Respectfully Submitted,

Dee Voss
Administrative Assistant