



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

ZBA Minutes 08-29-13

ZONING BOARD OF ADJUSTMENT MINUTES

August 29, 2013

Call to Order: 7:00 P.M.

ROLL CALL: Present was *Chairman*; Larry Ordway, Tim Fisher, and Paul Boniface. Absent was Jim Allen.

Minutes of June 27, 2013

L. Ordway motioned to accept the minutes of the June 27, 2013 meeting as written, second by P. Boniface.

There was no discussion on the motion and the vote was 3-0-0 U/A.

L. Ordway explained to the applicants that there are only three members sitting on the Board and all cases heard need three affirmative votes to be granted. He explained that the applicants have the right to ask for a postponement until there are five voting members sitting on the Board. If the applicants choose to continue with the hearing and it is denied they cannot use lack of a full Board as grounds for a rehearing. He added that if continued, the hearing would be continued to the September 26, 2013 meeting and that no further notifications would be sent. He asked the applicants to tell the Board if they would like to postpone the hearing when their case is called before the Board.

#13-08: A request from Gerald Dow for a variance from Article V §220-32E. to allow a custom framing shop in a residential district where retail is not a permitted use. The property is located at 182 Main St, Tax Map 29, Lot 31 in the MDR District. The Property owner of record is 182 Main Street Revocable Trust, Linda Senter Trustee.

Present was Gerald Dow and Attorney Jeff Dowd; representing Linda Senter. The applicant stated that they wanted to proceed with the hearing.

Atty. Dowd offered the following:

- G. Dow is seeking a variance to allow a light commercial use on the property
- The property was previously used as a plumbing business and before that a hair salon
- The property is located on the upper side of Main St. approaching Rte. 125
- The property is well maintained with a large barn on the side
- The previous use, a plumbing and heating business, used 3 box trucks and 10/12 employees coming and going every day, the garage was used as storage for materials, and deliveries of industrial grade materials were made by large trucks
- The front room in the home was used as an office and a hair salon
- The proposed use is a custom framing shop

G. Dow explained the following:

- He currently operates the custom frame shop out of Larry's Claim Bar; to the right of the building
- Customers bring in art work and they design the frames around the artwork; 10 to 15 days later the customers pick up the finished product
- They will have frames designs on the wall for display only
- They have two deliveries per week with a possible UPS delivery if they have a storage of materials
- Hours are 10 – 5 Monday through Friday and Tuesday and Saturday are 10-3
- No employees; just him and his wife work the business
- They will use only one bay of the garage for the business
- He and his family will live in the single family home
- G. Dow is planning to purchase the property
- Their private cars will be parked in the other half of the garage
- There will be no business vehicles
- No dumpster; 90% of waste is recycled

Atty. Dowd stated that it is due to the commercial use of the property that the home has been so well maintained over the years. He added that with the nature of G. Dow's business he will want to keep up the good appearance of the property as well. He explained that the reason for the hardship of this property is in the zoning; because the building the business will be in is not part of the living area a variance is required; otherwise it would be a home occupation. He also explained that the Town has recently approved an Overlay District along Main Street right up to but not including this property which would allow this use. Little River is the boundary for this Village District Overlay. The hardship in this case is that this property is located just outside the Overlay boundary; had the River been configured differently it would be a part of it. He added that this is the type of business that would be good for this part of the Town. He feels the addition of this business would not be any more of a traffic burden on the Town with only one or two customers a day. Ups and other delivery trucks already drive up and down Main Street every day. The abutters expressed concerns over the business lowering retail values. Atty. Dowd explained that the light commercial use has done wonders in keeping the property looking good and may help to raise the value. Abutter also expressed concerns over illuminated signage and parking area lighting. The Towns ordinance does not allow illuminated signs and the applicant does not have any intention of have a lit sign; he will only have what the Town allows. He stated that the use should be virtually invisible to the abutter's on Jessie George Road.

The applicant stepped through the criteria for the granting of the special exception and the following was noted:

- Property values will not be diminished
- Benefit to the public interest because a light commercial use will allow the property to keep being maintained as it currently is
- The current zoning could allow other residential units to be put in and could possibly have an absentee landlord
- The unique setting is that it has been used for many years commercially and is now one property short of the Village Overlay District because of the river. If it were one lot over it would be acceptable
- There is a lot of space on the property to handle a light commercial use
- The proposed use will not alter the character of the neighborhood nor pose any risks to the health and safety of the neighborhood
- Granting the variance would allow the business owners to continue to run their business during hard economic times
- A variance would allow a business more suitable towards the Town and Main Street
- It is not contrary as it provides a custom service for the customer, it is not noxious, noisy or odorous and is a low impact business
- The side awning facing Jessie George Rd. will be removed

Present to speak in favor of the application was Michelle Curran, Plaistow resident and Business owner. She noted that she is a member of the Plaistow Board of Selectmen but added that she is not present in that capacity. She stated that she feels the frame shop business would be a great fit for Main Street and the Town's vision for the village feel of the street. The reputation of the frame shop is that of a high standard product.

Present to speak in favor of the application was Steve Ranlett; Chair of the Plaistow Planning Board. He spoke with Leigh Komornick, Town Planner, and when they readjusted the lines for the Overlay this property should have been included in because of the plumbing and heating business. This was on the Planning Boards agenda for the last meeting but they did not approve it; none of the Board members opposed the use of the property but they could not approve it as they applicants needed to come before the ZBA.

There was no one present to speak against the application.

L. Ordway read a letter of opposition sent to the ZBA by several abutters, dated August 29, 2013. The letters expressed concerns with the retail business significantly lowering abutting property values and interfere with abutter's ability to sell their property, adding additional traffic to an already dangerous intersection, and using illuminated signage and parking area lighting that would be offensive to the abutters.

L. Ordway noted that the letter was signed by six residents of the area but that he cannot read four out of the six signatures. He added that the Board will pay the letter its due but he suggested that the residents that wrote the letter send a revised copy to Dee Voss identifying who they are.

Present was Linda Senter to speak in favor of the application. She noted that she and her husband ran their plumbing business out of the property for a long time before the condos were built across the street. She noted they once had an issue with noise due to copper piping being thrown into a truck but the issue was quickly resolved. Their business was very successful and she would like to see another business go in and do as well as they did. She does not for see a framing shop making as much noise as the plumbing business did.

There were no further questions from the Board and there was no one else present to speak in favor of or against the application and the case was closed.

L. Ordway explained the deliberations process noting that no further input could be given. He added that they will be notified in writing within ten (10) business days. If granted they cannot proceed with plans for thirty (30) days in case someone would like to appeal the decision.

#13-09: A request from John DeRoche & Kate Sherman-DeRoche for a variance from Article V §220-32I to allow an above ground swimming pool and attached deck to be constructed within ten (10) feet of the left side property line where twenty five (25) feet is the minimum required. The property is located at 20 Sunrise Terr, Tax Map 15, Lot 5, in the LDR District. The applicants are the property owners of record.

Present was John DeRoche and Kate Sherman-DeRoche; 20 Sunrise Terr. The applicants stated that they wanted to proceed with the hearing.

K. Sherman-DeRoche offered the following information:

- They are proposing to install an above ground pool
- It is a dead end street with very small lots located on it
- Many residence in their neighborhood have pools
- They would like to have more enjoyment of their property in the summertime
- The leach field and wetlands require them to install the pool at ten (10) feet from the property line
- The neighbors house would be thirty five (35) feet from the pool; the neighbor is okay with them installing a pool

The applicant stepped through the criteria for the granting of the special exception and the following was noted:

- It will be a small eighteen (18) foot round fifteen (15) inch high pool
- A deck will surround the pool but will not exceed over the ten (10) feet
- It will be contained on the property
- All the neighbors have pools; it will not be a burden nor diminish property values
- The hardship is in the lots small in size
- Due to the septic and wetland requirements it requires a variance

- There is no other place on the property to locate the pool
- They spoke with the neighbor and she is fine with it; it will not be a burden
- The pool will improve the property and allow the applicants to enjoy their property
- The variance will keep the applicants from moving to a new home with a larger lot size

There were no questions from the Board and there was no one present to speak in favor of or against the application and the case was closed.

L. Ordway explained the deliberations process noting that no further input could be given. He added that they will be notified in writing within ten (10) business days. If granted they cannot proceed with plans for thirty (30) days in case someone would like to appeal the decision.

#13-10: A request from Steven LeBoeuf for a variance from Article III, §220-9.1 to allow the construction of a residential driveway five (5) feet from the property line, where fifteen (15) feet is the minimum required. The property is located at 3½ Kimball Ave, Tax Map 41, Lot 26-1 in the MDR District. The applicant is the property owner of record.

L. Pagnottaro stated for the record that a letter was received from the applicant, Steven LeBoeuf, giving James M. Lavelle Associate permission to represent the applicant.

Present was Tim Lavallo; representing Steven LaBoeuf. He stated that they will proceed with the hearing. He offered the following information:

- They have constructed a new home; the lot was left over from a subdivision
- The dwelling meets all the setbacks from the MDR District
- The proposed driveway will be on the west side of the property five (5) feet from property line
- The reason they need the driveway on the side and not in front is for the swing of the driveway for both proper drainage and to access the garage
- It is an older neighbor hood created before the driveway set back requirements were made
- All the lots in the neighborhood are small in size and have driveways on the lotline
- The applicant would like more off-street parking

The Board and the applicant reviewed the site plan.

L. Ordway asked how the house was built without this problem becoming apparent during the building permit process.

T. Lavallo replied that they drew a plan and showed the driveway where it is on the septic design, were granted septic approval and pulled a building permit. It was brought to their attention after the house was already under construction; the foundation was already in and they were already roofing the house. That is why they have come before the Board tonight.

The applicant stepped through the criteria for the granting of the special exception and the following was noted:

- It will not diminish property values because it is a new home and the driveways proximity to the lot line is in keeping with other homes in the neighborhood.
- It is beneficial as it allows for more off-street parking.
- The special conditions are that the lots were created prior to the zoning and driveway set back requirements.
- The benefits sought cannot be achieved due to the size of the lot and the limits of the driveway location.
- Granting the variance would allow access to garage and allow for off-street parking. It would allow the property owner enjoyment of the property.
- The use is not contrary to the spirit of the ordinance because the driveway would be similar in location to others in the neighborhood.
- A lot of care was taken in designing to ensure water would not be dumped into the neighboring properties.

Present was James Wright, 5 Kimball Ave. He stated that he is not in opposition of the driveway being only five (5) feet away but is concerned with the drainage and the water run-off; Kimball Ave does slope towards his house. He hopes the driveway will be graded towards the street and have a berm to prevent run-off.

L. Ordway noted that the Board cannot help him with these concerns as he is okay with the five (5) foot proximity. He suggested he work with the engineering firm.

There were no questions from the Board and there was no one else present to speak in favor of or against the application and the case was closed.

L. Ordway explained the deliberations process noting that no further input could be given. He added that they will be notified in writing within ten (10) business days. If granted they cannot proceed with plans for thirty (30) days in case someone would like to appeal the decision.

#13-11: A request from Julian Kiszka for a variance from Article IV, §220-21.C.(1) to allow the installation of three (3) solar PV top-of-pole arrays, the first of which would be ten (10) feet from the edge of wetlands and within the twenty-five foot “no cut, no-disturb” wetlands buffer. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record.

#13-12: A request from Julian Kiszka for a variance from Article IV, §220-32I to allow the installation of three (3) solar PV top-of-pole arrays eighteen (18) feet from the front property line where thirty-five (35) feet is the minimum required. The property is located at 1 May Ray Ave, Tax Map 40, Lot 96 in the CII District. The applicant is the property owner of record.

L. Ordway explained that the Board has received a letter written from Harmony Energy Works, 10 Gale Street Hampton NH. The letter requested a continuance for both the above hearings (13-11 and 13-12) until the September ZBA meeting.

L. Ordway motioned to grant the request for a continuance for both cases to be continued at the September ZBA meeting. He added that this is the official notice and no further notices will be sent. The motion was second by T. Fisher.

There was no further discussion and the vote was 3/0/0 U/A.

DELIBERATIONS:

#13-08: A request from Gerald Dow for a variance from Article V §220-32E. to allow a custom framing shop in a residential district where retail is not a permitted use. The property is located at 182 Main St, Tax Map 29, Lot 31 in the MDR District. The Property owner of record is 182 Main Street Revocable Trust, Linda Senter Trustee.

T. Fisher motioned to grant the request from Gerald Dow for a variance from Article V §220-32E to allow a custom framing shop in a residential district where retail is not a permitted use. The property is located at 182 Main St, Tax Map 29, Lot 31 in the MDR District. The Property owner of record is 182 Main Street Revocable Trust, Linda Senter Trustee. The motion was second by P. Boniface.

L. Ordway summarized the case noting the following:

- The site was used commercially for many years; a plumbing and heating business and a hair salon.
- The applicant proposes a custom frame shop
- The business will occupy one (1) bay of the garage
- G. Dow will purchase the property and live in the single family home with his family
- The other side of the garage will be private parking for his family
- The property was accidentally left out of the Village District Overlay as heard by testimony of Planning Board Chair Steve Ranlett
- The Board heard about various concerns from unknown abutters who are in opposition of the application from the letter submitted

L. Ordway noted the concerns of the abutters; diminished property values and interference in the ability to sell their properties, added traffic, and illuminated signage. He explained that it could be true that values could be diminished

but that it will change ownership and this use is better than a multi-family ownership would be. With only a few deliveries and one or two clients a day it will not impact traffic in that area. The ordinance does not allow for illuminated signage and they can add it to motion.

L. Ordway added to the motion that there is no illuminated signage and signs must stick to the regulation 3' x3' size, second by T. Fisher.

The Board stepped through the requirements for the granting of a variance noting the following:

The variance is not contrary to the public interest

The public is interested in maintaining the property and having a village center feel for that area.

The spirit of the ordinance is observed

The spirit is observed; it has been a business on the site for many years and this use is less impact than the prior businesses on the site.

The values of surrounding properties are not diminished

A frame shop will not diminish values; some other businesses that could go in there would.

Literal enforcement of the ordinance would result in a hardship

The special condition of the property is that it does border the river. They heard testimony that it was an oversight that this property was not included in the Overlay District.

There was no further discussion on the motion and the vote was 3-0-0 U/A.

#13-09: A request from John DeRoche & Kate Sherman-DeRoche for a variance from Article V §220-321 to allow an above ground swimming pool and attached deck to be constructed within ten (10) feet of the left side property line where twenty five (25) feet is the minimum required. The property is located at 20 Sunrise Terr, Tax Map 15, Lot 5, in the LDR District. The applicants are the property owners of record.

P. Boniface motioned to grant the request from John DeRoche & Kate Sherman-DeRoche for a variance from Article V §220-321 to allow an above ground swimming pool and attached deck to be constructed within ten (10) feet of the left side property line where twenty five (25) feet is the minimum required. The property is located at 20 Sunrise Terr, Tax Map 15, Lot 5, in the LDR District. The applicants are the property owners of record. The motion was second by T. Fisher.

L. Ordway summarized the case noting the following:

- The proposed pool will be an eighteen (18) feet around pool and fifteen (15) inches deep
- It is a small lot; 100 feet by 160 feet
- One side of the property is the septic and leaching field and the other side is wetlands; no were else on the property to put the pool
- A lot of the neighbors have pools also

The Board stepped through the requirements for the granting of a variance noting the following:

The variance is not contrary to the public interest

The public interest is to protect the property owners close to the petitioner's property; in that neighborhood most of the property owners have pools. It would be wrong to restrict the use.

Substantial justice is done

Granting the variance would allow the property owners better use of their property.

The spirit of the ordinance is observed

The property owners have done everything they can to protect the wetland; that is more important than being close to the property line.

The values of surrounding properties are not diminished

This is an above ground swimming pool which can easily be taken down if necessary.

Literal enforcement of the ordinance would result in a hardship

The hardship is in both the wetlands and the small size of the lot.

There was no further discussion on the motion and the vote was 3-0-0 U/A.

#13-10: A request from Steven LeBoeuf for a variance from Article III, §220-9.1 to allow the construction of a residential driveway five (5) feet from the property line, where fifteen (15) feet is the minimum required. The property is located at 3½ Kimball Ave, Tax Map 41, Lot 26-1 in the MDR District. The applicant is the property owner of record.

T. Fisher motioned to grant the request from Steven LeBoeuf for a variance from Article III, §220-9.1 to allow the construction of a residential driveway five (5) feet from the property line, where fifteen (15) feet is the minimum required. The property is located at 3½ Kimball Ave, Tax Map 41, Lot 26-1 in the MDR District. The applicant is the property owner of record. The motion was second by L. Ordway.

L. Ordway summarized the case noting the following:

- The building is new construction
- The building is in an older neighborhood with small lots
- There are at least two other lots in the neighborhood with driveways five (5) feet or closer to the property lines
- The reason for the driveway to be close to the property line v. in front of the property is the water issues coming off the street (Kimball Ave.)
- An abutter was present to testify that although he is not in opposition to the close proximity of the driveway; water and drainage are a concern

L. Ordway expressed concern about this issue not being brought up in the planning process before the construction was started. This issue should not be dealt with after the fact as it puts the ZBA in a precarious position as well as the builder. He added that this is a serious issue that should be dealt with better than this case was.

The Board stepped through the requirements for the granting of a variance noting the following:

The variance is not contrary to the public interest

There are a lot of five (5) foot or less driveways in the area and the water is a major problem.

Substantial justice is done

It is an after the fact situation and because of the drainage issues substantial justice is being done.

The spirit of the ordinance is observed

The driveway will be five (5) feet from the property line but it is only a driveway and not the building. It can be converted into a more porous driveway. The spirit is observed.

The values of surrounding properties are not diminished

Surrounding property values will be increased due to the new construction.

Literal enforcement of the ordinance would result in a hardship

The hardship is in the small size of the lot and the water coming off the slope on Kimball Ave.

There was no discussion on the motion and the vote was 3-0-0 U/A.

Other Business/Updates: Misc. Notices, letters, and other Correspondence from Dept. of Building Safety, Planning Department and ZBA

The Board reviewed and discussed the 2014 Budget Worksheet.

L. Ordway noted that most of the items were the same as previous years; no big changes.

T. Fisher motioned to accept the 2014 budget as proposed in the amount of \$7, 110, second by L. Ordway.

There was no discussion on the motion and the vote was 3-0-0 U/A.

There was no other business before the Board; the meeting was adjourned at 8:29 P.M.

Respectfully submitted as recorded by Laurie Pagnottaro.

Approved by the Zoning Board of Adjustment on _____

Larry Ordway, Chairman