



Town of Plaistow
ZONING BOARD OF ADJUSTMENT
145 Main Street - Plaistow, NH 03865

ZONING BOARD OF ADJUSTMENT
July 27, 2017

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

Roll Call: Peter Bealo, *Chair*
Tim Fisher, *Vice Chair*
Jim Allen, *Excused*
Joyce Ingerson
Dan Lloyd
John Blinn, *Alternate*

★J. Blinn was appointed as a voting member for this meeting in place of J. Allen.

Review of Minutes

★T. Fisher moved, second by D. Lloyd, to approve the minutes of the April 27, 2017 meeting. There was no discussion on the motion. The vote was 4-0-1 (Blinn abstaining).

#17-05: A request from MBT Worldwide, Inc for a variance from Article V, Table 220-32F.C(1)(a) to permit the minimum lot size for the existing four (4) one-bedroom dwelling units of less than 440,00 sq. ft as required. The property is located at 11A East Rd, Tax Map 27, Lot 12 in the LDR District. The property owner of record is Nathan B. Spero.

Michael Malynowski, Allen and Major Associates, Inc, was present to represent that applicant.

It was noted that there were letters of authorization from both the applicant and the property owner to allow Mr. Malynowski representation.

M. Malynowski noted the following for the Board:

- The proposal is to do a lot line adjustment that would transfer 0.98 acres from 11A East Road to 88 Plaistow Road
- 11A East Road is currently 5.18 acres, which makes it a non-conforming lot because there are four (4) one-bedroom dwelling units on the parcel, which requires 440,000 sq. ft. of land by ordinance
- The structures are located on the front 0.72 acres, or 12% of the parcel because of large wetland areas that bisect the parcel
- There is a duck pond on the property
- The majority of the land is unusable and other dry areas are inaccessible

M. Malynowski pointed out the area that was proposed to be transferred to his client's parcel. He noted that the property at 88 Plaistow Road is oddly shaped and acquiring this small area would cure that situation.

- Soils analysis of 11A East Road shows that there will be no change in the existing 900 GPD (gallons per day) septic system that is currently supporting the property. He added that the soils would allow for up to a 1900 GPD system

J. Ingerson asked where the access to the abutting property would be.

M. Malynowski replied that there is already a curb cut on Plaistow Road and this added area would open that entrance.

M. Malynowski offered the following answers to the criteria to grant a variance:

- The proposed variance would not be contrary to the public interest because the existing lot is currently undersized based upon the currently zoning criteria for the number of approved dwelling units. There is sufficient land area to support the state approved septic system currently in operation on the site.
- The spirit and intent of the ordinance are preserved because the remaining portion of the lot will be of sufficient size to support the state approved septic system currently in operation on the site and does not pose and safety or health concerns for the Town or the surrounding parcels. The ordinance is intended to promote responsible growth and development, by granting the request the Board will be ensuring that the subject parcel and abutting parcel will be properly developed
- There is substantial justice in granting the variance because the remaining portion of the lot will be of sufficient size to support the state approved septic system currently in operation on the site and the existing residential uses currently in operation will continue to function as intended. In addition, the use would be limited to an access way and potential parking. No structures are being proposed in the subject area.
- The values of the surrounding properties will not be diminished because the existing residential uses shall continue to remain in operation and such uses are similar in nature to the surrounding parcels. The remaining portion of the lot will be of similar size to the abutting parcel and will not diminish the property values of said parcels.
- Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the existing lot pre-dates the zoning ordinance and is a legally non-conforming lot. The owner has a large property with in excess of five (5) acres of land. The front portion that abuts East Road is developed to support four (4) one-bedroom apartments and consists of approximately 0.1 acres of land. The entire rear portion of the property that constitutes approximately 4.4 acres of land is entirely inaccessible by the owner. As shown on the plan access is blocked by a protected wetland and duck pond. Accordingly, the owner is denied any economic benefit of approximately 80% of the lot which causes a hardship given the owner's original investment and ongoing costs associated with

the property. The proposed variance would enable the owner to recoup a portion of his investment in the property by allowing him to sell off a piece of land that would benefit the abutter and would have no detrimental effect on. The sold area would allow the abutting owner to even off the rear boundary of his property. The use would continue to be limited due to side and rear setback requirements and would simply enable the abutter to use the acquired area for an access way and potential parking. The additional land would also provide the abutter with a greater area in which to satisfy setback and buffer requirements. No structures are being proposed in the subject area.

P. Bealo asked where the existing septic system was located.

M. Malynowski replied that it was located roughly between the two (2) buildings. He showed the location of the system and the wells on the plan. He noted that the NHDES (New Hampshire Department of Environmental Services) was satisfied that the plan was adequate.

There was discussion regarding the character and quality of the land that would potentially be transferred to the abutter. It was noted that there was a small finger of wetlands included in the subject area, which is of no use to the property owner.

M. Malynowski offered that there would be retail buildings across the front of the property (at 88 Plaistow Rd) and that the curb cut for the property has already been installed as part of the Route 125 redevelopment.

P. Bealo asked if there were any additional questions from the Board; there were none. He asked if there was anyone speaking in favor or in opposition to the application. There were none and the matter was closed.

P. Bealo explained the deliberation process, noting that since the matter was closed there could be no additional input. The Board will make their decision and notices will be sent within ten (10) days. No action can be taken on the part of the applicant for thirty (30) days to allow for any appeals of the Board's decision.

DELIBERATIONS:

★D. Lloyd moved, second by T. Fisher, to approve the request for a variance to allow a lot with less than the required 440,000 at 11A East Rd, as stated in the legal notice.

J. Ingerson noted that they had to only consider that application in front of them, but she had many general questions about the overall project (at 88 Plaistow Rd).

P. Bealo reiterated that the small finger of land is totally cut off by wetlands from the rest of the property and does not contribute to the septic or well.

T. Fisher added the subject area was of no economic use to anyone.

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

- The application is not contrary to the public interest because the public has no interest in odd pieces of residential land that don't contribute economically or to a well or septic. It's dead land.
- The spirit and intent of the ordinance are observed because there is adequate space for a well and septic and the subject area does not contribute to the functioning of the overall parcel.
- Failing to grant the variance provides no justice.
- There was no evidence, in the form of abutter concerns, that there would be any diminution of surrounding property values.
- There is a hardship in not allowing the property owner to take advantage of an economic opportunity to sell off a piece of land that doesn't contribute to the functioning of the property. There is no real gain to the other parcel.

T. Fisher read a paragraph from the Department of Building Safety Staff Report:

"This office has seen conceptual plans for the proposed development of 88 Plaistow Rd. The proposed uses for the property are all permitted uses in the Commercial 1 Zoning District where the property is located. It is the opinion of this office that this project will fit within the district; clean-up an otherwise misused parcel; and increase the value of not only this property, but the surrounding properties as well. We see it as a good thing for the Town of Plaistow."

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

#17-06: A request from Brittany Day for a special exception under Article X, All Sections to permit a home office for a business, namely and office for a junk removal business. The property is located at 48 Pollard Rd, Tax Map 50, Lot 42 in the MDR District. The property owner of record is Bruce A. Desmet.

Alex Day and Clara Donovan, All Day Junk Removal, were present for the application.

It was noted that authorization had been received from Brittany Day and Bruce Desmet to allow A. Day and C. Donovan to represent the applicant and the property owner.

A. Day explained that he has a small junk removal, trucking and moving business that he would like to have a home office for. The office would be the base for the logistics of the business with a laptop and phone.

J. Ingerson asked where the junk was stored.

A. Day replied that it was taken to a transfer station in North Andover, Massachusetts.

T. Fisher inquired if there would be vehicles on the property.

A. Day answered that it would just be their personal vehicles.

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

- The application qualifies for a home occupation under §220-66.C
- There is nothing about the office use that would be injurious, noxious or offensive. There will not be emission of odor, fumes, dust, smoke vibration or noise. There will not be any process or equipment that will create a visual, audible or electrical interference or cause fluctuation in voltage off premises.
- The use is by a tenant in a single-family dwelling with owner's written permission.
- The business will occupy 16% of the living space.
- The office use will not change the residential character of the dwelling.
- No exterior storage is proposed.
- No sign is proposed.
- C. Donovan is the only person, not living in the dwelling, working for the business.
- There will not be any outside merchandise display.
- There is sufficient off street parking for the employees, there are no customers that come to the home
- Deliveries would all be residential in nature.
- There will not be any additional trucks on the property that are not in accordance with §220-13.
- There are no covenants in the deed that would disallow a home office
- The property is not part of a condominium
- This will be the only home occupation on the premises

P. Bealo noted that the home office is subject to inspection by the Building Inspector/Code Enforcement Official and that the Home Occupation Permit must be renewed every three (3) years.

J. Ingerson asked what kind of advertizing they do for their services.

A. Day replied that they use Google

D. Lloyd questioned again that there would be no trucks stored on the property. It was reconfirmed that there would not be.

P. Bealo asked if there were any additional questions from the Board. There were none. He asked if there was anyone speaking in favor of or in opposition to the application.

Larry Faretta, 50 Pollard Road asked what would happen to this approval if the Days moved from the property.

It was explained that both a variance and a special exception approval continue with the property. The difference between a variance is that the criteria for granting a variance are set by NHRsAs and the criteria a special exception is set by the Town.

It was noted that the approval would stay with the property as long as the next home office use complies with the provisions of Article X of the Zoning Ordinances.

There were no additional questions or input and the matter was closed.

DELIBERATIONS:

★T. Fisher moved, second by J. Ingerson, to approve the request for a special exception for a home occupation at 48 Pollard Rd, as stated in the legal notice.

J. Ingerson offered that “junk” can be a scary word, but this was just for the office and the business provides a valuable service.

P. Bealo added that it seemed to be a classic, cut-and-dry home occupation application.

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

OTHER BUSINESS:

P. Bealo noted that a letter of resignation had been received from J. Allen, who has moved out of town. He will be missed.

J. Blinn has agreed to move to a regular member position on the Board once approved by the Board of Selectmen.

J. Ingerson asked if the Board would consider moving its start time to 6:30 p.m. instead of 7:00 p.m.

It was noted that the 7:00 start time was part of the Board’s Policies and By-Laws and would require a Public Hearing to change.

D. Voss was directed to post for Public Hearing for a change to the Policy and By-Laws of the Zoning Board of Adjustment to change the meeting start time from 7:00 p.m. to 6:30 p.m. as part of the next scheduled meeting.

There were no additional matters before the Board. The meeting was adjourned at 7:40 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant