



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

ZONING BOARD OF ADJUSTMENT
March 29, 2018

The meeting was called to order at 6:30 p.m.

Roll Call: Peter Bealo, *Chair*
Tim Fisher, *Vice Chair*
Dan Lloyd
John Blinn, *Alternate*

Jonathan Gifford, and Gary Ingham, were observing for the meeting.

★J. Blinn was appointed as a voting member

Review/Approval of Minutes

★D. Lloyd moved, second by T. Fisher to approve the minutes of the February 22, 2018 meeting as amended. There was no discussion on the motion. The vote was 4-0-0 U/A.

P. Bealo explained that public hearing process. He noted that the applicant would be allowed to make their presentation, then the Board will ask any questions they may have. Any abutters or other interested parties will have the opportunity to ask questions, speak in favor of the application, or against it. Then the applicant will have the opportunity to answer any questions and/or address any concerns.

P. Bealo noted that there were only four (4) members available to vote at this meeting. He noted that any motion made by the Board must have three (3) votes to the affirmative to be passed. He also noted that the applicant could request a continuance until there is a five (5) member board. It was also noted the should the applicant continue with the four (4) member board and their application is denied, that cannot be used as grounds to request a re-hearing.

Applications #18-04 and #18-5 were interrelated and considered together for this meeting.

#18-04: A request from Hoyt Realty Trust, David M. Hoyt TR and Henry Torromeo for a variance from Article VI §220-47.B to allow a Planned Residential Development (PRD) with less than the required 200 feet of frontage. The property is located off Old County Road (off Carli's Way), Tax Map 32, Lot 29 in the RCII District. The applicants are the property owners of record.

#18-05: A request from Hoyt Realty Trust, David M. Hoyt TR and Henry Torromeo for a variance from Article VI §220-47.B to allow a Planned Residential Development (PRD) to be accessed from a roadway not currently an accepted existing public street. The property is located off Old County Road (off Carli's Way), Tax Map 32, Lot 29 in the RCII District. The applicants are the property owners of record.

Charlie Zilch, SEC and Associates was present for the application. Mr. Zilch decided to move forward with his applications despite the lack of a five (5) member board.

C. Zilch noted the following information for the Board:

- The subject property is located behind the Town's recreational ballfield
- The zoning is Residential Conservation II (RCII) which requires subdivisions to be laid out in accordance with the PRD (Planned Residential Development) ordinance
- The property is 19.76 acres with 50 feet of frontage on a 50-foot-wide access easement (Carli's Way)
- The subject parcel in its current configuration is a result of a lot line adjustment between the Town and the applicant years ago. Five (5) acres were transferred to the Town for expansion and construction of the recreation fields
- As part of the lot line adjustment the parcel was land-locked, so an access easement over Carli's Way was granted to Mr. Hoyt
- The existing roadway (Carli's Way) was built to the Town's specifications so that it could be accepted as a public access
- All inspections of the roadway construction were performed. The only item that was left unfinished was the top coat of pavement
- The application is for a variance from the requirement to have 200 feet of frontage on a public access road
- The second variance application is because Carli's Way was never accepted as a public access (town road), even though it was always intended to be as part of the land-swap agreement
- Mr. Hoyt is offering to complete the top coat of pavement on the Town's portion of the roadway when he does his portion of the road so that the Town can approve the entire road at the same time
- The variances are required to move the project forward with the Planning Board
- The need for once variance was created by the Town when Carli's Way was not accepted as a public access
- Once Carli's Way is accepted as a public access the variance would be moot

P. Bealo offered that it was surprising that the Town of Plaistow built the recreation fields on a roadway that is not approved as a public access and never foresaw this development coming.

It was noted that the Town is not required to put their plans for municipal development through the Planning Board process. It was also noted that doing so would provide a system of checks and balances to the process so such things as roadway acceptance might not slip through the cracks.

The Chair called a recess at 6:52 p.m. so that additional copies of paperwork could be made. The meeting was called back to order at 6:59 p.m.

C. Zilch, noted that the variance criteria were essentially the same for each variance request. He noted the following for the Board's consideration:

- The variance was not contrary to the public interest in that it would provide the applicant full productive use of the property by providing an access that will be built to town specifications. The road will provide unrestricted access for emergency apparatus and essential service vehicles. There would be no negative impacts to the general health, safety and welfare of the community.
- The spirit and intent of the ordinance will be preserved in that the ordinance itself requires that larger tracks of land be developed in this manner that "open spaces, wetlands areas, topographical

extremes and other considerations” are preserved. The only practical way to develop the property is as a PRD, which will preserve the natural features of the land, while not unduly limiting development.

- There is substantial justice in granting the variance as the property is only limited by the current designation and status of the access way, which was intended to be a public access. Changing the status of Carli’s Way will not enhance or diminish the land’s ability to support the proposed development.
- This property is zoned residential and developing it as such, with no negative offsite impacts should have no adverse effects to the surrounding property values.
- Not allowing the variance would seriously limit the development of the site in a way that would be permitted were it not for the lack of the 200 feet of frontage. Developing the property and completing the public access road will negate the need for the second variance.

There was discussion regarding proximity to the PARC (Plaistow Area Recreation Complex) baseball fields and whether or not there would be any impact.

There was discussion regarding the right-of-way (road) and the location of the cul-de-sac. It was noted that Mr. Hoyt owns another 20-25AC parcel adjacent to the subject parcel and the right-of-way was laid out in such a way as to provide access to that parcel.

It was noted that this parcel was proposed to be developed similar to those on Greenfield Drive and Village Way. It was also noted that there are no wetlands impact, no rare species impact and only three (3) State permits will be required, including subdivision, well and Alteration of Terrain (AoT) for the roadway.

There was a discussion about the drainage and the slopes. It was noted that there are some active wetlands pockets, but no very poorly drained soils.

It was also noted that this proposed plan did not require review by the Conservation Commission (ConCom).

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 applications. There was no one. P. Bealo asked C. Zilch if he had anything else to add. He did not and the matter was closed.

DELIBERATIONS:

★ D. Lloyd moved, second by T. Fisher to approve both requests for variance for PRD for the property located off Carli’s Way as posted in the legal notice.

P. Bealo noted that this was an interesting “Catch 22” in that the Town created the need for one of the variance requests by not accepting Carli’s Way as a public road as was initially intended. He added that should they be granted the variance they would still have to go back to the Planning Board for subdivision approval.

It was also noted that this was a permitted type of development and an efficient use of the land.

The Board reviewed the variance criteria noting the following:

- The application is not contrary to the spirit and intent of the ordinance as the use is permitted. It was also noted that one of the variance requests would be moot by the completion of the project which would include the acceptance of the road.
- There would be substantial justice in granting the variance because if Mr. Hoyt could not develop the land after working with the Town on a land swap for the property it would be an injustice. It was also reiterated the Mr. Hoyt will do the work needed to complete Carli's Way for his own development, but also the section that runs through PARC.
- There was be no decrease in surrounding property values as these would be new construction homes. The property values on Old County Road may be favorably impacted.
- It was noted that the hardship would be that the parcel could not be developed to its highest and best use without the variances.

There was no additional discussion on the motion. The vote was 4-0-0 U/A.

#18-06: A request from FAOCOM Realty, LLC (Brian Orlando) for a variance from IV, §220-21.B(1)(2) to construct a building addition within the 25'-50' no construction wetlands buffer. The property is located at 87 Plaistow Road, Tax Map 27, Lot 29 in the CI District. The applicant is the property owner of record.

Charlie Zilch, SEC and Associates was present for the application.

C. Zilch noted that following information regarding the application for the Board:

- The lot had recently been expanded
- Additional parking had been added to the site
- The size of the lot was now 6AC
- The front building that had recently been rebuilt after a fire provides office and sales space
- The rear building is use for service and repairs
- There are a fair amount of wetlands on the site
- Little River runs approximately 400 feet behind the site
- The proposal is for an eighteen (18) foot addition to the service and repairs building
- The area where the addition is proposed to go is already paved, so the applicant is looking to cover impervious pavement with impervious structure
- The closest point to the wetlands is thirty (30) feet
- The new roofline will be matched with the current one
- The proposed structure will have the same treatments as the existing building so that it will blend in
- The proposed structure will be used for additional repair work space
- There is a letter of support from the ConCom
- Soil Scientist Tim Ferwerda has flagged all the wetlands and noted them to be all poorly drained soils
- The wetlands buffer contains non-functioning wetlands with invasive species
- The wetlands had been previously impacted by junk cars, which have since been cleaned up
- Some of the wetlands were a result of development on Route 125 over time
- It was noted that the current wetlands buffer is ten (10) feet

There was discussion about the slopes and existing conditions on the site. It was also noted that the remaining pavement would provide an adequate travel lane to the back of the building.

C. Zilch explained that there would not be any change to the drainage flow, it will still be sheet flow.

C. Zilch offered the following regarding the criteria for the granting of a variance:

- The variance would not be contrary to the public interest because it would allow the applicant full and productive use of the property without a negative effect on the wetlands buffer or the general health, safety or welfare of the public
- The variance is not contrary to the spirit and intent of the ordinance because in this case the wetlands are a mix of previously disturbed poorly drained soils that buffer the wetlands. While the proposed building may require temporary disturbance to the existing paved surface the paved areas outside the building envelope will not be disturbed. The amount of impervious area will be the same pre- and post-construction
- There would be substantial justice in granting the variance by allowing the applicant the most cost-effective means of achieving his goal with the least amount of disruption to his business and the surrounding properties and the wetlands buffer
- The values of the surrounding property will not be diminished because granting the request would allow for the construction of a small addition to an existing established commercial building. The building does not change the use of the site
- Literal enforcement of the provisions of the ordinance would create an unnecessary hardship because this site, though large in size, is comprised mostly of wetland soils which limit the usable building area. The proposal to add an addition to an existing building within a previously disturbed and now stabilized areas is the least impacting while allowing the applicant the best use of the property to conduct his permitted use. Alternative locations were considered, but would be far costlier due to locations of utilities and other structures. Denial would be an unnecessary hardship due to the uniqueness of the lot in relation to the existing wetlands and the lack of a reasonable alternative location

J. Blinn asked about a storage container located on the site. It was noted that it would be removed.

T. Fisher asked if there would be car washing on the site. It was noted that the building was more for repairs and that there was only a single bay door.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of the application. A letter of support from the ConCom was read into the record.

P. Beal asked if there was anyone speaking in opposition to the application. There was no one.

There was a brief discussion about the access around the building.

C. Zilch noted that there was ample room for a turning radius all around the building.

P. Bealo asked if C. Zilch had anything else to add. He did not and the hearing was closed.

DELIBERATIONS:

★ T. Fisher moved, second by D. Lloyd to grant the wetlands variance request as written in the legal notice.

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

- There was nothing contrary to the public interest in that no one was likely to even see this structure. It was also reiterated that the area was already paved

- There is nothing contrary to the spirit and intent of the ordinance because the area is already paved and there will not be any additional impacts to the wetlands
- Substantial justice is neutral as there is no gain or loss to the general public
- All the surrounding properties are commercial and developed. This small addition will not have an adverse effect on their property values
- The hardship is that the area is already paved and have been for well over a decade, the proposed structure will not increase the impact to significant wetlands that surround the property and there is no other option to add a service area

There was no additional discussion on the motion. The vote was 4-0-0 U/A.

REQUEST FOR RE-HEARING:

#18-01: A request from Jason Settineri for a variance from Article V, §220-32I to permit a 30' x 50' equipment storage structure to be constructed 22.9' from the rear property line, where 50' is the minimum allowed setback. The property is located at 73 Newton Road, Tax Map 68, Lot 12 in the ICR district. Casset Holdings, LLC is the property owner of record.

#18-02: A request from Jason Settineri for a variance from Article V, §220-32I to permit a 30' x 50' equipment storage structure to be constructed 47' 4" from the front property line, where 50' is the minimum allowed setback. The property is located at 73 Newton Road, Tax Map 68, Lot 12 in the ICR district. Casset Holdings, LLC is the property owner of record.

A letter from Elaine DiPrimo and Cyndi Walton of 154 Corliss Hill Road, Haverhill, Massachusetts requesting a rehearing for the variance granted to 73 Newton Road for two (2) variance setbacks for a storage building was read into the record.

Ms. DiPrimo's property abuts the subject property to the rear and is the closest to the proposed structure.

★D. Lloyd moved, second by T. Fisher to grant the re-hearing request from Elaine DiPrimo and Cyndi Walton regarding variances granted for 73 Newton Road.

The letter noted that Ms. DiPrimo felt that the new structure would diminish her property values. No evidence was included in the letter that would support her claim, despite her note of having contacted both a realtor and an appraiser.

The letter also suggested that there were issues with the notification process. The Board reviewed the file and noted that certified letters were sent twice to Ms. DiPrimo as the property owner of record. The first letter was unclaimed after three (3) attempts at delivery by the United States Postal Service (USPS). The second letter, which re-noticed the first application, which had been continued, as well as the second application, was signed for by E. DiPrimo.

Ms. DiPrimo offered in her letter that she had called the Town Hall on the hearing date (February 22, 2018) stated in the legal notice, to inquire where the meeting will be held. The location of the hearing was also noted to be in the legal notice. Ms. DiPrimo's letter stated that she had spoken to a "Margaret" and was informed that the meeting had been postponed to the next Tuesday and that she would be once again notified by certified mail.

The Board noted that there is no “Margaret” employed at Town Hall and the meeting was indeed held on the night that was indicated in the legal notice which Ms. DiPrimo signed for.

Ms. DiPrimo’s letter also noted that the building would be an eyesore and there would be more lighting that would shine in her yard.

The Board noted that the current building is indeed an eyesore, but would be removed for the new building, which would be built to current code. The lighting on the existing office building was bright when first installed, but at the request of the Town has been directed downward. It was also noted that Mr. Settineri offered that there would not be any lights on the back of the building, so there should not be any additional shine into the 154 Corliss Hill property.

There was no additional discussion on the motion. The vote was 0-4-0 and the motion was denied.

The reason for denial: There was no additional evidence presented in the letter that would have changed the decision of the Board. The applicant was notified as prescribed by the NHRSAs so there was no procedural error.

Board members were reminded of the upcoming Planning and Zoning Conference on April 28, 2018 in Concord.

There were no additional matters before the Board. The meeting was adjourned at 7:52 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant