



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

**ZONING BOARD OF ADJUSTMENT**  
**May 31, 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, *absent*  
Jonathan Gifford  
Gary Ingham, *Alternate*

★ *G. Ingham was appointed as a voting member for this meeting.*

**Review/Approval of Minutes**

★ *D. Lloyd moved, second by T. Fisher to approve the minutes of the April 26, 2018 meeting as amended. There was no discussion on the motion. The vote was 5-0-0 U/A.*

**#18-10: A request Nelson Mendoza for a Variance from Article X, §220-66. Permitted uses, to allow a dog training business as a home occupation, which is not a permitted home occupation use. The property is located at 333 Main St, Tax Map 10, Lot 10 in the RCII District. Nelson Mendoza and Karina Gutierrez are the property owners of record.**

Nelson Mendoza, property owner and Attorney John Dennehy, counsel for Mr. Mendoza, were present for the application.

N. Mendoza noted the following regarding his application before the Board:

- This is not proposed as a doggie day care business, but a dog training business
- He has a business located in Boston
- He moved to Plaistow for the quieter, peaceful, open air environment
- He was looking to move some of his services to Plaistow
- There would be 3-5 dogs per day, between the hours of 9:00 a.m. and 2:00 p.m.
- The dogs that would be trained are those with behavioral issues that need to be away from other dogs, “the last resort cases”
- He provides services that few other trainers can provide
- He personally has four (4) dogs of his own
- The proposal is to mainly use the garage, basement and yard
- His personal dogs would be transported to Boston where they would stay for the day. The dogs to be trained would be picked up in Boston and brought to Plaistow for training.

P. Bealo asked what kind of behavioral issues these dogs have.

N. Mendoza replied that they were dogs with different aggression issues and rescues that have been in abuse situations.

P. Bealo questioned if there would be any overnights or weekends. It was confirmed that there would not be.

P. Bealo asked what the difference would be with clients dropping off their dogs versus Mr. Mendoza transporting them to the property.

N. Mendoza offered that it would cut down the number of vehicles.

T. Fisher asked the dogs would be in the basement what provisions would be made for feeding and waste management.

N. Mendoza replied that he would contract with a “poop service” for the waste. He noted that he would not be providing food for the dogs as that would be a liability.

G. Ingham questioned the transportation process. He asked if the applicant’s four (4) dogs were transported to Boston each day, where the four (4) dogs to be trained were then picked up and transported to Plaistow for training and then everything was reserved at the end of the day. He questioned why the dogs couldn’t be trained in the Boston location.

N. Mendoza explained that his dogs helped balance out the other dogs at the doggie day business in Boston. He added that the Boston business only offered basic obedience classes. The dogs that he was looking to train do not do well with other dogs.

J. Dennehy offered that the proposed use does not fit the list of approved home occupation. He noted that his client was proposing a personal service, but not as defined in the Plaistow Zoning Ordinances, and that was why they were seeking the variance. He added that the business would be invisible to the neighborhood as there would not be a sign, no customers on the premises and there would only be four (4) dogs contained mostly to the basement. Attorney Dennehy reminded that the property owner’s dogs would be taken off property during the training hours.

The applicant offered the following in support of granting the variance:

- The proposed variance would not be contrary to the Public Interest because there would not be any signage, no customers would be visiting the property, and only 3-5 dogs would be brought to the property for training
- The Spirit and Intent of the ordinance is preserved because the property has a garage and is fenced. The owner already has three (3) dogs of his own, which would not be comingled with the dogs being trained

- There is Substantial Justice and granting the variance because no more than five (5) dogs will be outside at any time. The income from the service falls squarely within the established laws for a personal services business under New Hampshire and Federal laws

P. Bealo noted that it was not considered as a personal services business under the Plaistow Zoning Ordinances.

J. Dennehy replied that it was true, but under common law it would be considered as such.

- The Values of Surrounding Property will not be diminished because the dog service for training will have a minimal impact on the neighbors due to the small number of dogs, the lack of signage and the fact that Mr. Mendoza will be the one to bring the dogs to the location
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because Mr. Mendoza would be required to rent a facility merely to train a handful of dogs

J. Gifford asked if they already have a commercial location in Boston, other than convenience what was the reason to bring the business to Plaistow.

J. Dennehy explained that the dogs to be trained should not be comingled with other dogs.

N. Mendoza added that the biggest thing was the amount of structure the dogs required in their training. He added that he has already created a name for his business in Boston and he wanted to offer the same service to help families and rescues in Plaistow.

G. Ingham questioned that if the dogs had to be brought from Boston to Plaistow because they were too dangerous to be with other dogs, wouldn't that make them just as much of a problem if they got out in Plaistow.

N. Mendoza offered that he has protocols in place to ensure safety in the home as much as he does in Boston. Safety of the dogs and the environment are his priority. He added that being in the basement offers him the opportunity to work one-on-one with each of the dogs.

D. Lloyd offered that having to rent a space, which was noted as a hardship, was just a cost of doing business.

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

Paul Kelly, 331 Main Street expressed concern over the ability to enforce there only being four (4) dogs on the property as well as issues with noise and smells that he felt could affect his property values. He added that he didn't want to make any enemies, but he was very much against the application.

Howard Wakefield, 344 Main Street offered he didn't have a problem with personal dogs, but had concerns over barking and whether or not such a business would affect his ability to sell his home in the future.

Janet Rockwood, 337 Main Street noted that she has seen as many as seven (7) dogs on the property and feels that the business was operating prior to Mr. Mendoza seeking authority to do so. She added that she has seen advertising for the business on Facebook. Ms. Rockwood noted that she rarely sees anyone on the property and has concerns that the house was purchased for a business use only. She also expressed concern that this business would negatively impact her property values. Ms. Rockwell gave the Board pictures that she had taken of the dogs in the yard.

Robert Rockwood, 337 Main Street added that he would not have bought the house if there had been a dog training business located next door when he did. He added that his young grandchildren play in his yard and he was concerned what would happen if one of these dogs were to get loose.

Tom Aprile, 331A Main Street offered that his driveway was next to this property and the bus stop is right at the driveway. He added concern for the safety of the kids at the bus stop if any of the dogs got loose, particularly considering the nature of the dogs that would be trained there.

Rebuttal:

The dates of the pictures taken by J. Rockwood were questioned. It was noted those pictures were in December 2017, January, February and March 2018.

J. Gifford noted that it suggested Mr. Mendoza had been already operating his business for a while.

J. Dennehy responded that the Code Enforcement Officer (CEO) asked Mr. Mendoza to stop, which he did at that time. He added that the CEO was told he could visit the site at any time to verify compliance.

T. Fisher noted that he counted seven (7) dogs in one picture.

P. Bealo asked the approximate size of the dogs.

N. Mendoza offered they were medium to large dogs, there were two (2) hounds; a boxer, lab, lab mix and a pit bull. He added that this was his first home. His father runs the Boston location. Mr. Mendoza noted that the dogs were out in the yard while they were

doing some interior renovations to the home. He added that he stopped his business as soon as he received the letter and at first had decided not to do the business in Plaistow and later changed his mind.

G. Ingham noted that in one of the pictures he could see a hole in the fence with a large dog near it.

N. Mendoza explained that the hole happened when a tree fell on the property.

D. Lloyd offered that it was an example of how things could happen that would be beyond anyone's control and create a safety concern.

J. Dennehy noted that Mr. Mendoza would always check the property security before letting the dogs out.

T. Fisher asked how many days a week the business would operate. It was noted to be five (5).

N. Mendoza offered that the house sometimes looks like no one is there because his mother has been very sick and he's been staying in Boston to be closer to her.

P. Bealo asked if there was anyone else who would like to speak to this application. There was no one and the matter was closed.

P. Bealo explained the deliberation process, noting that there could not be any additional input while the Board considered the application.

#### DELIBERATIONS:

**★ T. Fisher moved, second by G. Ingham, to grant the application for a home occupation at 333 Main Street as noted in the legal notice.**

G. Ingham offered that he didn't feel that this was a personal service business as was defined in the Plaistow Zoning Ordinance.

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

- The application is contrary to the Public Interest as demonstrated by the fact that multiple abutters testified as to their concerns with the granting of this application.

P. Bealo noted that if the abutters were to call their insurance companies they may find a coverage issue with such a business being located next door.

T. Fisher added that someone could have four (4) of their own dogs on the property. It is the nature of the dogs that are being trained that is of concern, particularly with the location of the bus stop at the end of the driveway.

- The application is not within the Spirit and Intent of the ordinance.

P. Bealo offered that this would be a stretch to see this business as a personal service business as the ordinance defines it.

D. Lloyd reminded that personal services are defined by the ordinances are things such as massages, hair and nail services.

T. Fisher added personal services are more interacting with people.

- There is not Substantial Justice in the granting of this variance

P. Bealo offered that there would definitely be a loss to the abutters if this application was approved.

D. Lloyd reminded that one of the abutters said that they would not have bought their property had there been a dog training business next door.

J. Gifford added that the number of abutters who came out in opposition to this application shows how much it matters to this neighborhood.

- There is the potential for the surrounding property Values to be diminished

P. Bealo noted that many of the abutters expressed concern for their property values. He added at the very least it may decrease their enjoyment of their own properties.

J. Gifford offered that this would not be easily policed as to the number of dogs on the property. He added that the intent of any business is to grow, and he hopes that the business does grow. He noted that he understands the appeal of the business to be at the home, but it seems to be contrary to the variance criteria and there are great concerns to the abutter.

- There is no unique circumstance that creates a Hardship

P. Bealo offered that he doesn't see that this property is any more unique in its setting than any other property located in the RCII (Residential Conservation II) district. He added that the hardship the applicant is presenting is only economical, which isn't a hardship that can be considered.

***There was no additional discussion on the motion. The vote was 0-5-0 and the motion was defeated. The applicant failed to meet any of the criteria for the granting of a variance.***

**#18-11: A request Nelson Mendoza for a Variance from Article X, §220-67C. Conditions, to allow a dog training business to be conducted outside the normal residential living areas of the dwelling, namely the basement, garage and yard. The property is located at 333 Main St, Tax Map 10, Lot 10 in the RCII District. Nelson Mendoza and Karina Gutierrez are the property owners of record.**

J. Dennehy noted that this application was contingent on the first application being granted. Since the application was denied the subsequent application is now moot.

There were no additional matters before the Board. The meeting was adjourned at 7:17 p.m.

Respectfully Submitted:

Dee Voss  
Administrative Assistant