



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

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**  
**September 27, 2018**

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

**Roll Call:** Peter Bealo, *Chair*  
Tim Fisher, *Vice Chair, excused*  
Dan Lloyd  
John Blinn  
Jonathan Gifford  
Gary Ingham, *Alternate*

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

**Review/Approval of Minutes**

Review of Minutes from August 30, 2018 meeting.

**★J. Gifford moved, second by G. Ingham, to approve the minutes of the August 30, 2018 meeting. There was no discussion on the motion. The vote was 5-0-0 U/A.**

*Continued from August 30, 2018*

**#18-14: A request from Patrick Connolly for an Variance from Article V, §220-32I to permit a structure, namely a residential addition, to be within 6.5 feet of the property line, where 15 feet is the minimum required. The property is located at 8 East Pine St, Tax Map 38, Lot 122 in the MDR District. Patrick M and Allison L Connolly are the property owners of record.**

Patrick M. Connolly requested to withdraw his application without prejudice. He noted that a survey had been done on the property that will change the setback variance request for his application.

**★P. Bealo moved, second by D. Lloyd to allow Patrick Connolly to withdraw his variance application #18-14, 8 East Pine Street without prejudice. There was no discussion on the motion. The vote was 5-0-0 U/A.**

**#18-15: A request from Courtney Mills (Berube) for an Variance from Article III, §220-9.1 to permit driveway within the minimum 15-foot side setback. The property is located at 3 Glendale Cir, Tax Map 39, Lot 51 in the MDR District. The applicant is the property owner of record.**

Courtney Mills (Berube) and Alex Berube, 3 Glendale Cir, were present for the application.

A. Berube noted the following about his application:

- The property was purchased by the Berubes in 2013
- There was an existing driveway that the applicants paved in 2014, not realizing that it wasn't a permitted driveway
- The driveway is too close to the abutter's property
- The owners have had a survey of the property done to know exactly where the property lines are

A. Berube went through the variance criteria for the Board, offering the following in support of the application:

The proposed variance is not contrary to the Public Interest because there are two (2) other houses near-by with two (2) driveways. When the property was purchased there was a gravel driveway, which is what was paved over. The

real estate listing, from when they are considering purchasing the property, described the driveway as being 50 feet from the paved road.

The Spirit and Intent of the Ordinance are preserved because the driveway doesn't affect anyone's property. The abutters are up a hill and through a patch of trees. The applicant has taken care of 200SF of property around the driveway for six (6) years. If the driveway were to be removed they would have to park in mud.

There is Substantial Justice in granting the variance because the applicant would not have paved the driveway without good reason. He paved the gravel that was already there out of desperation. There is a steep hill and the road is not paved or maintained by the Town and this location made it easier to enter the house.

The Values of Surrounding Properties will not be Diminished because the gravel driveway was already there when the house was purchased and he just paved it. Mr. Berube added that he maintains the road in the winter time and clears the brush, which also benefits the elderly neighbors on the street.

Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the biggest hardship is the winter time. If the applicant knew he would not be able to pave the driveway he would not have purchased the house. When there is heavy snow it's nearly impossible to get out of their driveway or road. It's extremely difficult to use a snow blower with mud and stone. Because of the slope of the property and the location of the other driveway it's unrealistic that groceries and children can be carried into the house. The cost to install the driveway was \$6,700, four (4) years ago just to make the parking situation functional. That cost has only recently been paid off. The error of not seeking a permit for the pavement was an honest mistake.

A. Berube added that he is constantly maintaining the road for washouts and other damage. He also reiterated that he had a survey done for this application and now knows exactly where his property lines are, which he didn't know before.

P. Bealo asked if the Board had any questions.

There was a discussion about the location of the two (2) driveways as well as the slopes on the property.

P. Bealo asked if there was anyone speaking in favor of the application.

Kyle Sawyer, 5 Glendale Cir, noted that he had sent in a letter, but was also in attendance to support the application. He noted that he was the neighbor most directly affected by the location of the driveway and he had no objections to the where it is. He added that he was also surprised with the results of the survey.

P. Bealo asked if there was anyone speaking on opposition to the application.

Raquel Holt, 207 Oak Ridge Rd noted that the only privacy they had from the location of the driveway was a crop of trees, which are shown on the new survey to be on the applicant's property. She expressed fear that they would now cut down those trees and eliminate their privacy. She had a particular concern that removing the trees would expose their pool. Pictures were provided to show the existing conditions between the two properties.

J. Gifford noted that the driveway was already existing and all that was done was paving it.

R. Holt asked what the minimum distance the driveway was supposed to be from property lines.

P. Bealo noted that it was fifteen (15) feet and that was why there was a need for the variance because it was too close on the side property line.

A. Berube noted on rebuttal that the driveway is 46 feet from the back yard and he parks his camper at the edge of the driveway, so it provides some screening.

C. Berube added that the house was set up higher.

A. Berube offered that the abutters have increased their fence to a height of nine (9) feet.

There was no additional testimony and the matter was closed.

P. Bealo explained the deliberation process. He noted that people were welcome to stay and listen, but no additional input could be provided. He added that a written decision would be sent to the applicant within ten (10) days, but no permits could be issued for thirty (30) days to comply with the appeal period provided in the RSAs.

### **DELIBERATIONS**

**#18-15: A request from Courtney Mills (Berube) for an Variance from Article III, §220-9.1 to permit driveway within the minimum 15-foot side setback. The property is located at 3 Glendale Cir, Tax Map 39, Lot 51 in the MDR District. The applicant is the property owner of record.**

***★D. Lloyd moved, second by J. Gifford, to grant the variance request to locate a paved driveway within the minimum fifteen-foot side setback at 3 Glendale Cir.***

G. Ingham noted that he has driven past the house and noted that the second driveway is the same level as the house. He noted that it was an unpaved road so he could see where there would be maintenance issued and why the applicant would want the driveway located there.

J. Gifford offered that the driveway pre-existed the applicant's purchase of the property and he was improving the property by paving it. He added that he didn't see the view hazard to the abutting neighbor who was concerned for their privacy.

The Board reviewed the variance criteria noting the following findings:

The application is not contrary to the Public Interest because it's an improvement to the property. The Board didn't think it was too close to the concerned abutter as it met the setback from their property.

D. Lloyd noted that it wasn't the same as locating a shed too close to a property line. He added that there was nothing to prevent property owners from parking on their lawns.

The Spirit and Intent of the Ordinance is preserved because it seems the failure to meet the setback was a product of previous owners not knowing where the boundary lines were. It was also noted that the closest affected abutter did not have a problem with the location of the driveway.

There is Substantial Justice in granting the application because the paved driveway enhances the property and makes it more functional. It was also noted that a legal driveway could have been constructed that could have been closer to the abutter expressing concern over privacy.

It was stated that the paving of the driveway in its current location would not Diminish the Values of Surrounding Properties.

There would be an Unnecessary Hardship in asking the applicant to remove the pavement and revert to the mess of a gravel driveway. It was noted that this was the most practical way to access the house taking the slopes into consideration.

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

**#18-16: A request from Christian Giangarra for an Variance from Article IV, §220-21.B(1)&(2), C(1)&(2) to permit a proposed addition and drive to be within the 50-foot and 75-foot wetlands setback. The property is located at 103 Forrest St, Tax Map 60, Lot 54 in the LDR District. The applicant is the property owner of record.**

**#18-17: A request from Christian Giangarra for an Variance from Article IV, §220-26 to permit an upgraded/replacement sewage disposal system within the 100-foot wetlands setback. The property is located at 103 Forrest St, Tax Map 60, Lot 54 in the LDR District. The applicant is the property owner of record.**

Charlie Zilch, SEC and Associates, and Nicholas Giangarra, son of the property owner, were present for the application.

It was noted for the record that written permission had been received to allow C. Zilch and N. Giangarra to make the application and represent the property owner.

C. Zilch noted that following information in support of the application:

- The parcel is 3.1 Acres, with 150 feet of frontage
- The property is located in the Low Density Residential (LDR) district
- The structure is a three-bedroom, single-family dwelling built in 1970
- There is a garage under with the current dwelling
- The parcel is serviced by on-site well and septic
- The applicant would like to construct an additional garage with a one-bedroom accessory dwelling unit (ADU) on the west side of the existing dwelling
- New Hampshire Department of Environmental Services (NHDES) has approved a septic design to include the ADU
- The wetlands have been flagged by Tim Ferwerda, Soil Scientist.
- Because of the wetlands there is a limited building area
- NHDES does not have wetland setback restrictions
- The structure would be well outside of the twenty-five (25) foot no disturb buffer, but they cannot meet the additional fifty (50) foot no structure buffer
- They are unable to meet the requirement that the septic be 100 feet from the wetlands for the proposed septic, but they are farther away than the existing system

P. Bealo noted that the new septic plan appeared less intrusive than the existing system.

C. Zilch noted that the existing system was stone and pipe. The new system would be smaller and was an innovative Enviro-Septic design. He reiterated that while they couldn't meet the full 100 feet from the wetlands, they were able to move the new system farther away.

P. Bealo asked if the existing leach field was conforming.

C. Zilch replied that it was not, but it did meet all NHDES requirements.

C. Zilch explained that the existing structure meets all setbacks, but the existing driveway does not. The new structure is proposed to be built where the existing driveway is, thus the need for the variances.

N. Giangarra noted that there is a shed on the property that will be removed, but the trees would be staying.

C. Zilch noted that the two (2) variance requests would allow N. Giangarra to set up for the long-term care of his father.

P. Bealo offered that the structure being built where the existing driveway is minimizing the impact.

C. Zilch added that the driveway would be sloped towards the back to better direct runoff to the wetlands.

J. Blinn added that there is the benefit of a more efficient septic system proposed.

C. Zilch explained the new septic system, noting that it was slightly higher in elevation for the water tables.

C. Zilch reviewed the criteria for the granting of a variance noting the following:

Structure in Wetlands Setback

The proposed variance would not be Contrary to the Public Interest because by granting the variance it will allow Mr. Giangarra full and productive use of the dwelling, allowing expansion to the area currently utilized for the driveway, yard and storage space, which are already within the wetlands buffer. This area is the most practical location when considering the existing driveway and living space within the existing dwelling. This will not be contrary to the public interest because the adjacent wetlands are far enough from the proposed addition and driveway that a natural buffer can be maintained. Considering both the allotted buffer and the fact that the construction will be within a previously disturbed area, the wetlands will remain unaffected by any improvements. All considered, the nature of the addition and its location, do not negatively affect the general health, welfare and safety of the general public.

The Spirit and Intent of the Ordinance is preserved because the intent of the ordinance is to protect and buffer the wetlands complex. In this case, the wetlands under variance consideration is a mix of poorly drained and very poorly drained forested wetlands that are located within an undisturbed and established limited buffer. There will be no need to impact (cut and remove additional trees) within the established buffer to construct the addition and driveway. The proposed use, residential dwelling and access, will not add additional impact to the wetlands. Therefor the spirit and intent of the ordinance, protection of the wetlands, will be maintained by granting the variance.

There is Substantial Justice in granting the variance by allowing Mr. Giangarra the most cost-effective means of achieving his goals with the least amount of disturbance to the site or disruption to his property and surrounding properties. By granting the variance allowing construction in an area that lacks buffering by its historic use more significant impacts are avoided elsewhere on the lot where wetland buffers are currently established.

The Value of Surrounding Properties will not diminish because granting the variance would allow for construction of an ADU in support of the Giangarra family. The ADU will support one (1) bedroom, offsetting from the three (3) bedrooms in the existing dwelling. This addition is to a home constructed 48 years ago when there was little consideration given to wetland buffers. Considering the location of the addition there will be virtually no increase in site use, sewage loading, traffic, noise and pollutant levels or any negative impact on wetlands that would diminish surrounding property values.

Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because this site, though large in size, has several wetlands located throughout. When applying the wetlands setbacks only the area in which the addition is proposed allows for the greatest level of compliance to the setback requirements. There are no other reasonable alternative locations that would fully comply with wetland or property line setbacks. In addition, construction within those areas would require much greater site disturbance, increased costs and no appreciable gain in respects to wetland protection. Denial would be an unnecessary hardship due to the uniqueness of the building and yard space location in relation to the wetlands and lack of reasonable alternative location.

Septic within 100' of Wetlands Boundary

The proposed variance will not be Contrary to the Public Interest because by granting the variance it will allow Mr. Giangarra the full productive use of the property by allowing the modest expansion without negatively affecting the wetlands and groundwater resource. The proposal is to provide an upgraded-replacement sewage disposal system to be located within an area that improves upon the setbacks over the existing non-conforming location. In addition, the replacement system, Enviro-Septic, is a more effective system in reducing wastewater contaminants than the existing system. All considered that nature of the septic system and its location, do not negatively affect the general health, welfare and safety of the general public.

The Spirit and Intent of the Ordinance is preserved because the intent of the ordinance is to provide an adequate buffer from onsite septic systems to wetlands in order to prevent groundwater contamination. In this particular case the current three-bedroom dwelling is served by a conventional pipe and stone septic system located approximately 55 feet from very poorly drained soils and 50 feet from poorly drained soils. Our proposal if to offset one of the bedrooms from the main dwelling to the ADU resulting in a very slight increase in total sewage flow. This proposed flow will then be treated within a sealed, 2,500-gallon septic tank which is much larger than the current 1,000-gallon

tank. This larger tank will allow for better removal of suspended solids than the current tank. From the tank, the greywater will then be treated within the previously mentioned Enviro-Septic system, a system proven to remove approximately 98% of wastewater contaminants. This Enviro-Septic leachfield will be located 75' feet from very poorly drained soils and 50' from poorly drained soils, improving upon the less effective current system. These setbacks meet the NHDES requirements without requiring waivers. This system design offers the greatest protection for the groundwater resources while remaining affordable and easily installed. Therefore, the spirit and intent of the ordinance, protection of the wetlands and groundwater resource, will be maintained by granting the variance.

P. Bealo noted that the new septic would be 20 farther than the existing system.

There is Substantial Justice in granting the variance by allowing Mr. Giangarra the most cost-effective means of achieving his goals with the least amount of disturbance to the site or disruption to his property and surrounding properties. By granting the variance and allowing installation within an area that meets NHDES regulations but lacks buffering by its historic use, more significant impacts are avoided elsewhere on the lot where wetland buffers are currently established.

The Values of Surrounding Properties will not be Diminished because granting the variance will allow for the construction of an ADU in support of the Giangarra family. The ADU will support one (1) bedroom, offsetting from the three (3) bedrooms in the existing dwelling. As demonstrated the proposed sewage disposal system is designed to support the use; meets NHDES requirements; and takes advantage of an extremely effective innovative system. Considering the location and type of the system and the decrease in bedrooms in the primary dwelling to offset the additional bedroom in the ADU there will be virtually no increase in site use, sewage loading, traffic, noise and pollutant levels or any negative impact of wetlands that would diminish surrounding property values.

Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because this site, though large in size, has several wetlands located throughout. When applying the wetlands setbacks only the area in which the sewage disposal system is proposed allows for the greatest level of compliance to the setback requirements. There are no other reasonable alternative locations that would fully comply with the wetlands setbacks. In addition, the ordinance does not consider the effectiveness of innovative systems such as the one proposed and its ability to remove wastewater contaminants within a less restrictive area. Denial would be an unnecessary hardship due to the uniqueness of the lot and yard space location in relation to the wetlands setback and lack of reasonable alternative location.

P. Bealo asked about the useable area of the parcel.

C. Zilch replied that of the 3.1 Acres he estimates that about .5 Acres is useable considering all building and wetland setbacks.

P. Bealo questioned if there were both poorly and very poorly drained soils.

C. Zilch offered that there was no other building envelope on the property as it is mostly wetlands.

P. Bealo asked if the Board had any additional questions.

J. Blinn offered that there was no other place to build or put the septic as there would be impact from nearly any other location.

P. Bealo asked if there was anyone speaking in favor of the application.

A letter of support from the Plaistow Conservation Commission was read for the record.

P. Bealo asked if there was anyone speaking on opposition to the application.

Patty Gauron, 101 Forrest Street, offered that she wasn't speaking either for or against, she had come to the meeting with questions about the frontage of the property. Knowing that there was a survey done of the property has answered those questions for her.

There was no additional input and the matter was closed.

### **DELIBERATIONS**

**#18-16: A request from Christian Giangarra for an Variance from Article IV, §220-21.B(1)&(2), C(1)&(2) to permit a proposed addition and drive to be within the 50-foot and 75-foot wetlands setback. The property is located at 103 Forrest St, Tax Map 60, Lot 54 in the LDR District. The applicant is the property owner of record.**

***★J. Gifford moved, second by D. Lloyd, to grant the variance request to locate a garage/ADU addition within the 50-75 wetlands buffer at 103 Forrest St.***

The Board reviewed the variance criteria noting the following findings:

- Granting the variance is not contrary to the Public Interest as it is in the public's interest that families take care of family members and allowing this ADU will achieve that goal.
- The Spirit and Intent of the ordinance is preserved because the land that the garage/ADU is proposed for has already been disturbed. The new driveway will be a good thing to direct runoff more efficiently to the back of the property where the wetlands are located.
- There is Substantial Justice as there is no loss or gain to the general public, only a loss to the applicant if he can't build.
- The lot is buffered with trees that will be remaining so there shouldn't be anything that would diminish surrounding Property Values. It was also noted that there would not be any increase in traffic to the property.
- There would be an Unnecessary Hardship if the variance would be denied considering the small portion of the 3.1A parcel that is not useful due to the wetlands on the property. The area requested is the least impactful.

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

**#18-17: A request from Christian Giangarra for an Variance from Article IV, §220-26 to permit an upgraded/replacement sewage disposal system within the 100-foot wetlands setback. The property is located at 103 Forrest St, Tax Map 60, Lot 54 in the LDR District. The applicant is the property owner of record.**

***★J. Gifford moved, second by D. Lloyd, to grant the variance request to locate sewage disposal system within 100 feet of a wetland at 103 Forrest St.***

P. Bealo noted that the proposed system was smaller and farther away from the wetlands than the current system.

J. Gifford added that forty (40) years ago when the system was installed wetlands were really considered. He offered that the system was a good one to have lasted as long as it did and the new system would be better for this and the surrounding property values.

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

- The new system would not be contrary to the Public Interest as much as leaving a 40+ year old system in the ground closer to the wetlands
- The Spirit and Intent of the Ordinance is preserved as the newer, more innovative septic system will be farther from the wetlands and offer better protections for the wetlands
- There is Substantial Justice in granting the variance as there is no gain to the general public by leaving the 40+ year old septic system in the ground when a newer, more-conforming system is sought by the applicant

- There will be nothing to diminish surrounding property values by installing a newer, more-effective septic system
- There would be an Unnecessary Hardship to the applicant as he would not be able to get approval to build his ADU and help his family. It would be an unnecessary hardship to not allow the applicant to replace his system with a newer, and better one

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

**#18-18: A request from Danielle Reynolds, by her Attorney Beaumont & Campbell, PA, for an Variance from Article VIII, 220-57(C) to permit a 1,130SF Accessory Dwelling Unit, where 1,000SF is the maximum allowed. The property is located at 29 East Rd, Tax Map 14, Lot 28 in the LDR District. The applicant is the property owner of record.**

Attorney Bernard Campbell, Beaumont and Campbell, PA and Daniel Reynolds, father of the applicant were present for the application.

It was noted that written authorization had been received for Attorney Campbell to represent the applicant.

B. Campbell offered the following information for the Board to consider:

- According to the Assessor's records the dwelling was built in 1960
- The original owner built the second unit
- There has been a septic design approved for an ADU
- The floor plan of the structure shows it to be a sprawling dwelling
- The structure is located on a large parcel on the corner of East Road and Sunrise Terrace
- The property was originally two (2) lots that were combined
- All utilities are separate
- The applicant will be installing larger windows were needed to meet fire safety codes
- The owner would like to market the property as having two (2) units
- Looking at the floor plan, there is no practical way to carve out an additional 130SF to be compliant

B. Campbell offered the following information in support of the variance application:

There is nothing contrary to the Public Interest by granting the variance since there will be no physical changes to the existing structure, which fits into the character of the neighborhood. Therefore, there is nothing that would impact the health, welfare and safety of the general public.

The Spirit and Intent of the Ordinance is preserved because the additional 130SF is not an overwhelming increase over the maximum allowable and the ADU will still be subordinate in size to the primary dwelling unit. It was again noted that there are no physical changes planned for the structure.

There is Substantial Justice in granting the variance because there is no gain to the community by denying it and there is no feasible way to reduce the size of the unit by 130SF because all wiring and plumbing is already in place.

The Surrounding Property Values shall not be diminished because there will not be any physical changes to the existing dwelling.

Denying the variance would result in Unnecessary Hardship because of the building was purchased with the two (2) units and has a unique layout that is not conducive to a single-family dwelling. It was suggested that it would be reasonable for the property to be considered a two-family, but the applicant did not want to push that far, they are just asking for the existing ADU to be validated. It was also noted that the ADU provides an affordable housing opportunity.

P. Bealo noted that the floorplan could be reduced by putting a wall up to decrease the size of the living room, but it wasn't enough of a gain to do any good other than to be compliant.



B. Campbell suggested that any such wall would interfere with the functioning of the stairs.

P. Bealo asked if the Board had any questions.

J. Gifford offered that the floor plan lends itself to a multi-family dwelling.

P. Bealo added that it wasn't a bad thing to have more workforce housing.

J. Gifford added that there was ample parking to support both units.

It was noted that the structure has four (4) bedrooms in the primary unit and two (2) in the ADU.

P. Bealo asked if there was anyone speaking in favor of or opposition to the application. There was no one and the matter was closed.

### **DELIBERATIONS**

**#18-18: A request from Danielle Reynolds, by her Attorney Beaumont & Campbell, PA, for an Variance from Article VIII, 220-57(C) to permit a 1,130SF Accessory Dwelling Unit, where 1,000SF is the maximum allowed. The property is located at 29 East Rd, Tax Map 14, Lot 28 in the LDR District. The applicant is the property owner of record.**

***★D. Lloyd moved, second by P. Bealo, to grant the variance request for a ADU of 1,130 SF, 130SF greater than the allowable at 29 East Road.***

P. Bealo offered that he didn't see an issue with granting the variance for the existing conditions. He added there didn't seem to be a practical way to just wall off to decrease the size by 130SF.

J. Gifford noted that it was about 13%, which is not significant.

J. Blinn added that nothing was going to physically change, he added that he didn't think of the designated hallway as true living space.

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

- There is nothing contrary to the Public Interest as the structure is already existing
- The Spirit and Intent of the ordinance are preserved because they are not seeking to increase more than what is already there
- There is Substantial Justice in granting the variance because there will be no gain to the public by denying the application
- There will be no decrease in surrounding Property Values as there will not be any physical changes that would cause an impact. The structure is already there and the neighbors won't even notice a change,
- There would be an Unnecessary Hardship that would impact the re-sale value. The property is on a corner lot and has more value as a single-family home with an ADU than a six (6) bedroom single-family home.

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

### **OTHER BUSINESS**

It was noted that there was the potential for a quorum issue for the November 29, 2018 meeting. It was the consensus of the Board to change the meeting date to the following Thursday, December 6, 2018.

Board members were reminded to review the proposed changes to the Rules of Procedure.

There were no additional matters before the Board. The meeting was adjourned at 8:05 p.m.

Respectfully Submitted:

Dee Voss  
Administrative Assistant