



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 25, 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

The minutes were deferred to the next meeting.

#18-19: A request from Patrick Connolly for an Variance from Article V, §220-32I to permit a structure, namely a residential addition, to be within 4.5 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 Connolly, property owner, was present for the application.

P. Connolly offered the following information in support of this variance application:

- The property is already non-conforming because the house, which was built in 1895, is already too close to the property line
- The proposal is to erect an addition to the rear of the house extending the line of the existing structure straight back
- The addition is to allow his growing family more living space instead of forcing them to relocate to a larger house

P. Connolly offered the following in response the variance criteria:

- The proposed variance is not contrary to the Public Interest because the house is already in the setback. The addition will be added to the same line as the house, straight back and will maintain the architectural integrity of the home.

- The proposed use will not be contrary to the Spirit and Intent of the ordinance because the house is already non-conforming and the addition will not be any closer than the current structure
- There is Substantial Justice in granting the variance because the house was built prior to the zoning setback requirements.
- The proposed addition will not Diminish Surrounding Property Values, in fact, the addition will increase the value of his home, which may in turn increase the value of the surrounding assessments.
- There would be an Unnecessary Hardship because it would force the family to sell the home they already live in and love.

J. Blinn asked if the addition was intended to follow the existing house line. It was confirmed that it would.

G. Ingham questioned if the addition was proposed to go where the existing deck is located. It was confirmed that it was.

P. Bealo inquired about the buffer between this property and the affected abutter.

P. Connolly explained that there was a fence and arborvitaes along that property line. He added that he had removed some of the pines and that there were soft maples further into the back yard.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor of, or in opposition to the application. There was no one and the matter was closed.

P. Bealo explained that the Board would now deliberate on this matter and the no additional input could be received by the Board. Applicants are welcome to stay and listen to the deliberations, but must remain quiet. Notices of the decisions will be sent out within ten (10) days. No permits, related to any variance application can be issued for thirty (30) days, which is the appeal period prescribed by the NHRsAs.

DELIBERATIONS:

#18-19: A request from Patrick Connolly for an Variance from Article V, §220-32I to permit a structure, namely a residential addition, to be within 4.5 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.

★J. Gifford moved, second by D. Lloyd to approve the application for a variance to allow a structure to be within 4.5 feet of the property line.

J. Gifford noted that the structure is essentially proposed to go where the existing deck is located. He added that there were no abutters present expressing any concerns.

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

- Granting the variance is not contrary to the Public Interest in that the only public who would be interested would be an abutter and there were none present. There is also no wetland impact. The addition is proposed to follow the existing building line, which is already in the setback, and back into the property. Therefore, the addition will not easily be seen by the public.
- The Spirit and Intent of the ordinance is preserved because there will no further intrusion into the setback than is already existing.
- There is Substantial Justice in granting the variance because there is no advantage to the public by denying the application; only a loss to the applicant who would not be able to expand the living space
- The house will be worth more, which could increase, not Diminish Surrounding Property Values
- The uniqueness of the house being built prior to zoning would create an Unnecessary Hardship to the applicant, as he would not be able to build an addition to accommodate his family's needs.

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

#18-20: A request from Robert Collins for an Variance from Article III, §220-9.1 to permit an expanded driveway within 3 feet of the property line, where 25 feet is the minimum required. The property is located at 54 Newton Rd, Tax Map 67, Lot 9 in the ICR District. The applicant is the property owner of record.

Robert Collins, property owner, was present for the application.

R. Collins offered the following information in support of his variance requests:

- The pavement was added to accommodate the number of vehicles on the property
- The applicant has purchased a semi tractor-trailer truck to start his own business and needed a place to occasionally park it between long-distance runs and to service it
- The applicant purchased the property because it was located in the Integrated Commercial Residential (ICR) district, and he thought it would be permitted
- He has already paid \$3,500 for the new driveway pavement
- The new paved driveway increases the property value
- The applicant has made many improvements to the property since he purchased it, including remodeling the interior of the house
- The driveway already existing and when it was paved it was made wider by eleven (11) feet closer to the side property line
- The pre-existing driveway was never the minimum twenty-five (25) feet from the property line

R. Collins offered the following responses to the criteria for the granting of a variance:

- Granting the variance will not be contrary to the Public Interest because it doesn't affect the neighbors. The paved drive will not wash out and will give safer access to Route 108 for the tractor-trailer. The truck is well maintained and not ugly. Mr. Collins added that a neighbor offered congratulations for starting his own business.
- The variance is not Contrary to the Spirit and Intent of the ordinance the existing portion was exempt and the new section does not cross the property line or affect the neighbors. The loom was washing out before, now the vehicles are parked on pavement.
- There would be Substantial Justice in granting the variance because the pavement was completed prior to knowing that new permits would be required. It enhances the property and allowed for a large mound of dirt to be leveled out.
- The variance will not Diminish Surrounding Property Values because there are already businesses located in the area and the property is located in the "Industrial" Commercial district.

P. Bealo noted that it is not the "Industrial" Commercial District, but the "Integrated" Commercial Residential District.

- There would be an Unnecessary Hardship in not granting the variance because the new paving prevents washout to the Plaistow Cabinet property to the north. Without the pavement the property is less attractive; and the pavement provides safer parking and access. It was again noted that the property was purchased because it is both residential and commercially zoned. Mr. Collins added that the truck would only occasionally be parked there as he was mostly on the road. He offered it's been at the property more lately because he has been working it to get it ready for traveling.

J. Gifford asked if the paved area was just wider or longer.

R. Collins explained that it was eleven (11) feet wider and twelve (12) feet longer. He noted that he had cut out some apple trees when he installed the driveway, adding that the droppings from the trees were causing a problem.

P. Bealo asked if the buffer between properties had been eliminated.

R. Collins confirmed that it had been, adding that it was full of ants and was a "mess."

P. Bealo noted that if the applicant intended to run his business from the property he would also have to apply for a Special Exception for a Home Occupation.

R. Collins explained that he leases himself out to a company as an owner/operator for the trucking.

P. Bealo asked if Mr. Collins if he had applied for a Home Occupation yet. He replied that he had not.

G. Ingham offered that the if the applicant does this for a living then he should have known that permits would be required by the State and Town.

R. Collins replied that he did not know.

There was discussion regarding a memo from the Code Enforcement Officer that noted he had told the applicant not to park the tractor-trailer truck on the property, and the pavement was added after that caution. Mr. Collins disputed that account offering that he had paved the property prior to purchasing the truck, and the truck has only been there for service. He added that he's never been sent an official letter about the truck, only the paving.

P. Bealo asked if the Board had any additional questions. There were none.

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

Donna Soucy, 54 Newton Rd, noted that she is the applicant's mother. She noted that before the paving the truck was never on the property. She added that the paving improves the property and makes getting in/out of the property easier, especially considering the traffic entering from Forrest St.

R. Collins explained to the Board that he had brought his disabled son up from Florida after a custody battle with the child's mother.

J. Gifford asked if there had been any input from NHDOT (New Hampshire Department of Transportation) regarding the access.

P. Bealo added that because it was a State road, the State controls the access and the applicant will need to getting State permitting if the variance is approved.

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

Nancy Bishop (Unit 2), John Hannagan (Unit 28) and Anthony Barna (Unit 1) of 135 Forrest St offered concern over the runoff that would be created from the additional asphalt and how it would affect their wells and basements. It was noted that basements in the first building already flood in heavy rains.

P. Bealo asked if any issues had been noted yet.

N. Bishop noted that they needed to monitor the well.

D. Lloyd asked if any additional from off from the subject property had been noted yet with the recent rains. It was confirmed there was not any additional runoff noted.

There was discussion about the positioning of the condo buildings behind the subject property. The residents noted where there are slopes and which buildings have water issues. It was noted

that there are other water issues for the condo property, such as slopes and ineffective culverts, other than what could be attributed to the paving on the subject property.

Michael Gallant, owner of Plaistow Cabinet, 56 Newton Rd offered that he and his father had opened the business in its current location in the early 1990's. He added that he has great concern over the runoff from the subject property, especially in the winter. He added that the applicant has been the kind of neighbor who would rather ask for forgiveness than permission and has been on his property without permission. He added that he has additional concerns now that the tree buffer has been removed. Mr. Gallant added that he's not 100% sure where the property line is anymore.

R. Collins rebutted noting that there is nothing different about the runoff, it's still running to the culvert. He noted that he does push the snow towards the Plaistow Cabinet property and rides his snowmobiles on the property as well, but didn't know it was an issue and will stop. He added that he could also pull the asphalt up if that was a problem.

There was additional discussion on where the drainage flows in this area. It was noted that there was a culvert on the Plaistow Cabinet property that was designed to handle their drainage exclusively. It was noted that if the asphalt is removed then the porous dirt would absorb any runoff.

R. Collins reiterated that he bought the property because of its location in the ICR district. He didn't see that it was a problem.

It was noted that the problem was that the applicant had not obtained prior permits. It was also noted that if he wanted to take advantage of the commercial aspects of the ICR district then he would need to get site plan approval from the Planning Board.

M. Gallant offered that he has been trying to be neighborly. When the snow was plowed onto his property and the with the snowmobiles and cars parked on the property he never said anything because he didn't want any problems. He added that he didn't want to have to put up "No Trespassing" signs because that didn't seem neighborly either, but he was not interested in these activities taking place on his property.

#18-21: A request from Robert Collins for an Variance from Article III, §220-13.B to permit the parking of a semi-truck, greater than 1-ton capacity, which is not permitted on a residentially-used lot. The property is located at 54 Newton Rd, Tax Map 67, Lot 9 in the ICR District. The applicant is the property owner of record.

R. Collins offered the following information in support of his variance request:

- The trailer part of the truck was never brought to the property. Only the cab part between runs and when he needed to work on it.

R. Collins offered the following responses to the criteria for granting a variance:

- The variance would not be contrary to the Public Interest because the property is located in the ICR zoning district and is abutted by three businesses.
- The Spirit and Intent of the Ordinance are preserved because the property is located in the ICR district which allows for businesses and residents.
- There would be Substantial Justice in granting the variance because the applicant purchased the property with the intent of parking the truck.
- There will be nothing that would Diminish the Surrounding Property Values because there will not be any signage, all changes have been cosmetic, and there will not be any business operations on the property
- Denial of the variance would create and Unnecessary Hardship because the property is located in the ICR District, the business is owner-occupied and this is a one-truck business.

J. Gifford asked for clarification of what is permitted in the ICR District. The following was noted:

- Residential Use
- Residential Use with a Home Occupation, approved by Zoning Board of Adjustment (ZBA) approval of a Special Exception
- Combined Residential and Small-Scale Commercial, with a Planning Board Approved Site Plan
- Commercial, with a Planning Board Approved Site Plan

D. Lloyd noted that the lettering on the door of the truck reads “Collins Trucking.”

R. Collins replied that the registration on the vehicle is Robert Collins.

G. Ingham also noted that the applicant had already testified that he had purchased the truck with the intention of operating a single-truck business.

R. Collins clarified that he is not trying to run a company out of the house, adding that a company that he leases to will do most of the paperwork as he will be operating under their authority with apportioned plates.

P. Bealo offered that there is no buffering or screening provided to shield the truck, it’s right out in the open.

R. Collins replied that it sits into the property about ten (10) feet.

P. Bealo noted that if there isn’t an approved business use of some form, then the property is supposed to be maintained as exclusively residential.

J. Gifford offered that it would have been prudent of the applicant to have had some conversations with his neighbors, as clearly there are problems that he is not aware of.

P. Bealo asked if the Board had any additional questions, there were none.

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

D. Soucy offered that she agreed with granting the variance because he (R. Collins) is not bothering anyone and the truck would only be there 1-2 days a week.

P. Bealo noted that if the Board grants a variance it goes with the property forever, even if it's only used once a year. He added that means that if the property were sold someone could make use of the variance and park a truck there every day, so the Board needs to be mindful of all the consequences of their decisions.

G. Ingham expressed concern that the applicant did and was still doing things that needed permits before permits were even asked for. He offered that ignorance of the requirements for permits was not an excuse, it is up to a property owner to ask before doing something.

D. Soucy offered that every town was different. She added that there were from Massachusetts where more things are allowed.

It was noted that is why the applicant should have asked, because things are different town-to-town and state-to-state.

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

Michael Burke, 51 Newton Rd offered that when he wanted to locate his plumbing business at his current location, he had to go to the Planning Board, even though there had already been an approved business there. He added that the applicant is always working on his truck and other vehicles idling them all hours of the day and night. M. Burke added that the applicant has not been neighborly noting that there is a spotlight that shines directly into his bedroom and illuminates is all night. He offered that he has asked Mr. Collins to shut it off but was informed that it operates on a sensor so the cars driving by are tripping it to come on.

M. Burke offered that he had spoken with David Nault, owner of 53 Newton Road, who couldn't be here because of a trip to Arizona, but he expressed similar concerns about the noise.

M. Burke noted that R. Collins has been working on the truck already and then he yells over the noise of the idling truck. He added that there seems to be no consideration for the neighbors. He reiterated that his bedroom is on that side of the house, behind a fence and it's still loud and bright.

A. Barba offered there was also a spot light on the back of the house the was on all night long. He added that there were many vehicles on the property noting two (2) boats, a motorhome and a soft shed. A. Barna noted that there were always motor noises coming from the property and adding another truck would only increase that noise.

J. Hannagan questioned what protections there would be from radiator and oil spills on the property potentially causing a hazard to their well.

R. Collins offered that Powerhouse Plumbing (51 Newton Road) run a much larger business. It was reminded that there was a Planning Board approved site plan for that business at that location.

R. Collins noted that he always disposes of oil in the property manner returning it to the auto parts store. He suggested the complaints about the lighting were “baloney” and stated that Mr. Burke puts everything on camera. He added that when there are deliveries to Plaistow Cabinet he can’t even hear the trucks idling from there.

D. Soucy explained that all the vehicles noted were their personal vehicles and nothing was illegal. She added that there was nothing that she was aware of that preventing someone from working on their own cars and that doing so had saved them \$4,000. She also suggested that the light was not illegal either.

R. Collins expressed frustration that D. Nault (53 Newton Rd) was even brought up as he wasn’t an abutter. He offered further explanation about bringing his son from Florida and that he was trying to do the best he could to support him

There was no further comment and the matter was closed.

DELIBERATIONS:

#18-20: A request from Robert Collins for an Variance from Article III, §220-9.1 to permit an expanded driveway within 3 feet of the property line, where 25 feet is the minimum required. The property is located at 54 Newton Rd, Tax Map 67, Lot 9 in the ICR District. The applicant is the property owner of record.

★D. Lloyd moved, second by J. Blinn to approve the application for a variance a driveway to be expanded to within three (3) feet of the property line at 54 Newton Rd.

J. Gifford offered concern about the issues expressed by the abutters. He offered that the applicant should have had more communication with them to resolve issues before coming to the Board. He added that even if a variance were granted the applicant would still have to get approval from NHDOT.

J. Blinn questioned if the application could be granted with the condition of a buffer.

★J. Blinn moved, second by J. Gifford to amend the motion to grant the variance by adding a condition for screening.

P. Bealo offered that there would only be a three (3) foot wide area to provide a buffer.

There was discussion about what sort of buffering would be adequate. It was noted that the distance isn’t just for visual screening, but also to provide area for drainage runoff to be recharged to the ground and not flood the abutting property.

D. Lloyd offered that he had looked at the property and it didn't appear to slope to the north (Plaistow Cabinet) side.

J. Blinn suggested that the side of the driveway be required to have a berm to prevent water flowing to the abutting property.

After additional discussion the Board decided that buffering and a berm would not resolve the matter of the driveway being so close to the property line.

P. Bealo noted that he would vote against the amendment as it wasn't the Board's job to propose these things for the variance request.

★J. Blinn withdrew his motion to amend the motion. J. Gifford withdrew his second.

Members expressed sympathy for both the applicant and the abutters, noting that both sides had reasonable issues.

P. Bealo offered that the driveway was already non-conforming at fifteen (15) feet and questioned if reducing it to three (3) feet was reasonable.

G. Ingham noted that his concern was that everything was done without a permit or even the question if a permit was needed. He added the applicant could have easily made a phone call to find and solved the problem. He offered that he didn't think it was the Board's job to grant variances to fix problems created by not asking the questions.

J. Gifford reminded that the applicant said that he would remove the driveway as installed. He added that there is short frontage to get in/out to Route 108, which could be an issue. He added that he also had concerns about water retention.

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

- The application is contrary to the Public Interest as indicated by the number of abutters who took the time to come and testify against the application.
- Since the existing driveway was already non-compliant, making it twelve (12) feet closer does not preserve the Spirit and Intent of the Ordinance
- There are gains and losses on both sides, so there is no Substantial Justice in granting the variance
- The additional paving for additional vehicles could Diminish the Surrounding Property Values
- The property is well-used as a residence, for which the existing driveway was a reasonable size. Any Unnecessary Hardship was imposed by the applicant himself spending money prior to obtaining permits.

J. Gifford offered that he would like to try to help and expressed regret that the applicant spent money prior to knowing if what he wanted to do was permitted.

There was no further discussion on the motion. The vote was 0-5-0 and the variance request was denied as not meeting any of the criteria that would allow the Board to grant a variance.

#18-21: A request from Robert Collins for an Variance from Article III, §220-13.B to permit the parking of a semi-truck, greater than 1-ton capacity, which is not permitted on a residentially-used lot. The property is located at 54 Newton Rd, Tax Map 67, Lot 9 in the ICR District. The applicant is the property owner of record.

★D. Lloyd moved, second by J. Blinn to approve the application for a variance to allow a semi-truck, greater than one-ton capacity to be parked on a residentially used lot.

P. Bealo offered that he would have looked at the application differently if there had also been a home occupation.

The Board reviewed the permitted uses for a home occupation as described in Article X. Home Occupation of the Plaistow Zoning Ordinances (PZO) to see if the applicant's business use would be allowed. It was the opinion of the Board that it was not a permitted use as a home occupation.

The Board reviewed the request to park a large commercial vehicle on a residential lot. They noted that the applicant testified that the truck would only be there 1-2 days a week. It was noted that it wouldn't be practical from an enforcement standpoint to try and restrict the truck to those 1-2 days.

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

- A large, unscreened commercial vehicle on a residentially used lot is not in the Public's Interest.
- Allowing the truck would not preserve the Spirit and Intent of the Ordinance.
- The truck could be parked elsewhere, therefore there is no Substantial Justice in granting the variance.
- The longer the truck stays on the property the more likely it is to Diminish the Surrounding Property Values.
- There are no unique characteristics in the land that would cause an Unnecessary Hardship if the variance is denied.

There was no further discussion on the motion. The vote was 0-5-0 and the variance request was denied as not meeting any of the criteria that would allow the Board to grant a variance.

There were no additional matters before the Board. The meeting was adjourned at 8:50 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant