



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 3, 2019**

The meeting was called to order at 6:31 p.m.

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

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

Review/Approval of Minutes

December 6, 2018 Minutes

★J. Gifford moved, second by G. Ingham, to approve the minutes from the December 6, 2018 meetings. There was no discussion on the motion. The vote was 4-0-0 U/A.

P. Bealo noted that there were only four (4) members available for this meeting and explained the voting process, which requires three (3) votes to the affirmative to pass a motion to approve. He offered the applicant the opportunity to continue to the next meeting in hopes that there would be a five (5) member board. It was also noted the should the application not be granted; the applicant could not use the lack of a five-member board as grounds to request a rehearing.

The applicant chose to move forward with the application with the four (4) member board.

#18-24: A request from LaPlume NH Nominee Trust (Ronald and Susan LaPlume) for a Variance from Article V, §220-32I, to permit a structure, namely concrete block wall aggregate storage bins, to be placed along the common lot line with Tax Map 70, Lot 22. The property is located at 117 Newton Rd, Tax Map 70, Lot 26 in the ICR District. The applicants are the property owners of record.

#18-25: A request from LaPlume NH Nominee Trust (Ronald and Susan LaPlume) for a Variance from Article III, §220-17.3.A, to permit storage containers to be placed along the common lot line with Tax Map 70, Lot 22. The property is located at 117 Newton Rd, Tax Map 70, Lot 26 in the ICR District. The applicants are the property owners of record.

P. Bealo opened the Public Hearing on matters 18-24 and 18-25 at 6:35 p.m.

Charlie Zilch, SEC & Associates; Ronald and Susan LaPlume, property owners; and Katie Macy, Attorney for the LaPlumes, were present for the application.

C. Zilch offered the following information regarding the application:

- The property is 4.22C, with 213 feet of frontage in the Integrated Commercial Residential (ICR) District
- There are Planning Board approved residential and commercial uses on the property
- The residential and commercial uses each have their own wells and there is a shared septic system
- The current site plan was approved in 2000 as a heavy equipment storage and repair facility or commonly known as a contractor's yard
- The residential and commercial uses each have their own driveway access
- The owner purchased additional land from the Board of Selectmen (BOS) and with input and concurrence from the Conservation Commission (ConCom)
- The acquired strip runs across the back of the parcel and varies between 60'-90' in width
- There is a fifteen (15) foot trail easement to the Town along the property line where Haverhill and Plaistow meet
- The land was incorporated into the lot, but the use was not expanded by site plan to the acquired land
- The parcel next door has the same contractor's yard use
- The business next door had encroached onto the parcel, removing the trees, when it was still owned by the Town
- Once informed that business left the town-owned parcel, but there were no restoration efforts made
- The applicant would like to be able to place storage trailers and concrete block bins for aggregate storage on the section of land recently acquired
- The strip is not wide enough to meet the setbacks required for either the trailers or the aggregate storage

P. Bealo noted the narrowness of the parcel and asked if there was anything found about the strip that shows it was ever intended to be a road.

C. Zilch replied that nothing was found in his deed research. He added that there many odd-shaped lots in New Hampshire (NH).

R. LaPlume offered that he had started the process to purchase the lot 10-12 years previously and noted several stops and starts with getting the purchase finalized.

There was discussion about the parcel and the Town's trail easement. It was noted that there was town-owned property on the southern side of the parcel that established a trail all the way to the Brandy Brow property (89 Newton Road). It was noted that initially

ConCom was against the sale, but eventually Mr. LaPlume was able to purchase the strip of land. R. LaPlume noted that in his multiple meetings with ConCom, the BOS and the Planning Board he always stated that his intent was to use the acquire parcel for business storage.

C. Zilch noted that the purchased lot was consolidated into the existing lot in 2017, however the use of that portion was not updated at that time. He added that when the application was made to amend the site plan and use the acquired parcel, the need for variances was discovered.

C. Zilch offered that the Planning Board had conducted a site walk of the parcel. At that site walk he did an information straw poll of the members to ask if they would grant a waiver of the landscape buffering requirements for the area and received a positive response.

P. Bealo asked if there was room to maneuver to access the containers and storage bins.

C. Zilch replied that there was plenty of room if they are allowed to be located along the property line as proposed.

The Board reviewed pictures of the containers, bins and the location of the subject parcel. It was noted that the abutting property already had storage along the same property line.

C. Zilch added that he had submitted a letter from the abutting property owner (Early) stating that he had no objections to the placement along the property line.

C. Zilch noted that the two applications had essentially the same responses to the criteria for the granting of a variance. He offered the following in support of the requests:

- The variance would not be Contrary to the Public Interest because it would allow Mr. LaPlume full and productive use of his property, the area is located at the back of the parcel and was previously disturbed. The location offers further protection for residential uses as it will be further away and reduce the loading/unloading noises. There will not be any hazardous materials stored.
- The Spirit and Intent of the Ordinance is preserved because the intent of the ordinance is to ensure adequate setbacks are provided between potentially differing commercial business as well as residential uses. This parcel and the abutting parcel uses are very similar, which negates the need for buffering between the businesses. Allowing the placement in this area keeps them further away from the residential uses in allowed areas.
- There is Substantial Justice in granting the variance because it has been the LaPlume's intent to consolidate and use the acquired property from the onset of discussions with the Town to purchase. The land lends itself to the proposed use and very little else. Because of the restrictive, narrow width of the property there is essentially no buildable area. Allowing the aggregate storage bins (and the

storage trailers) leaves other valuable areas of the property available for more substantial structures if they become necessary.

- The Values of Surrounding Properties will not be diminished because the business use is existing and these additions support that business. These storage areas are away from other uses, particularly residential. Considering the nature of the abutting uses and the demonstrated cooperation between the two abutting commercial uses there should be no diminution of property values.
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because the zoning restriction does not consider particular instances such as this. When there are two abutting properties with similar uses the setbacks between them are unnecessary. The Town allows pavement to be within ten (10) feet of the property line, but these concrete bins (and storage trailers) are required to be thirty-five (35) feet. The restrictive shape of the acquired parcel with its extremely limited conforming space, and the limited use it provides truly only lends itself for the one use, and that is for storage space. Not being able to use the space at all would be an unnecessary hardship.

J. Gifford noted that the tenant of the property is listed as Frank DeLucia and Sons, Inc (DeLucia). He asked if this request was for his use or Mr. LaPlume's.

R. LaPlume replied that DeLucia would be using it. He added that Mr. DeLucia has been operating his business on the site for 6-7 years without complaint.

J. Gifford offered that it was for his personal information only, not related to the variance request. He added that he has always known DeLucia to be a reputable company.

C. Zilch noted that the responses for both the concrete aggregate storage bins and the storage trailer locations were essentially the same.

J. Gifford questioned if any of the structures were located near a watershed. It was confirmed that they are not.

It was asked what kind of aggregates would be stored. It was noted that mostly gravel, stone and sand. They don't use mulch. It was also noted that the work done with the aggregates was done on the job site, not at this location.

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

P. Bealo asked if there was anyone speaking in favor of the applications. A letter from Stephen Early, owner of the abutting property was read into the record. He noted that he did not have any objections to these items being located along the shared property line and waives the buffer.

P. Bealo asked if there was anyone speaking in opposition to either application. There was no one and the Public Hearing on both matters was closed at 7:05 p.m. He noted that

the Board would now deliberate on these two (2) matters and that no additional input would be allowed. P. Bealo explained that the notice of decision would be sent within ten (10) days, but it would be thirty (30) days before any permits could be issued.

DELIBERATIONS

P. Bealo opened deliberations at 7:06 p.m.

#18-24: A request from LaPlume NH Nominee Trust (Ronald and Susan LaPlume) for a Variance from Article V, §220-32I, to permit a structure, namely concrete block wall aggregate storage bins, to be placed along the common lot line with Tax Map 70, Lot 22. The property is located at 117 Newton Rd, Tax Map 70, Lot 26 in the ICR District. The applicants are the property owners of record.

★G. Ingham moved, second by J. Blinn to grant the variance request to locate concrete aggregate storage bins at 117 Newton Rd along the common property line with Tax Map 70, Lot 22.

J. Gifford offered that the request was a “no brainer” the business use is established, the abutter doesn’t have an issue, there is no impact to a watershed, no runoff issues, for both the bins and the storage trailers.

P. Bealo added that both the BOS and ConCom knew how he intended to use the property through the whole sales process. He offered that it would be disingenuous to say no now.

J. Gifford reminded that there was also the trail easement.

G. Ingham noted that the land was already cleared by another party and that there was no reason why Mr. LaPlume shouldn’t be able to use it.

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

- There was nothing contrary to the Public Interest in that the public has no interest in preventing this use on a site of this type. There is no money or loss for anyone
- The Spirit and Intent of the Ordinance is preserved because the same use is on the other side and that abutter has no issues
- There is Substantial Justice in granting the variance because there is no loss to the public by doing so. There would be a significant loss to the applicant if the application was denied
- Surrounding Property Values will not be Diminished because this is already a contractor’s yard and will continue the same use.
- The applicant added a unique strip of land that he acquired from the Town, it would be an unnecessary hardship to not allow him use of it now.

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

#18-25: A request from LaPlume NH Nominee Trust (Ronald and Susan LaPlume) for a Variance from Article III, §220-17.3.A, to permit storage containers to be placed along the common lot line with Tax Map 70, Lot 22. The property is located at 117 Newton Rd, Tax Map 70, Lot 26 in the ICR District. The applicants are the property owners of record.

★P. Bealo moved, second by J. Gifford to grant the variance request to locate storage trailers at 117 Newton Road along the common property line with Tax Map 70, Lot 22.

J. Gifford offered that all the arguments for locating the storage trailers were the same as they were for the concrete bins. He added that where they were proposed to be located would allow for more room for truck access as well.

The Board agreed that all the arguments for the first application were applicable to the second application.

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

Other Business

Zoning Board of Adjustment By-Laws – Proposed Changes – First Reading

P. Bealo offered information on how the public can obtain a copy of the proposed by-law changes the Board was seeking to make. He noted that these changes have been read and discussed at several previous meetings.

★J. Gifford moved, second by G. Ingham to post the proposed changes to the Zoning Board's By-Laws for second reading on the next available agenda. There was no discussion on the motion. The vote was 4-0-0 U/A.

2019 Deadline and Meeting Schedule

★J. Gifford moved, second by P. Bealo to approve the 2019 ZBA Deadline and Meeting Schedule as presented. There was no discussion on the motion. The vote was 4-0-0 U/A.

There was no additional business before the Board and the meeting was adjourned at 7:19 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant