



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

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
March 28, 2019**

The meeting was called to order at 6:32 p.m.

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

Election of New Officers

P. Bealo asked for nominations for Chair of the Zoning Board of Adjustment (ZBA) for the coming year.

★ G. Ingham nominated P. Bealo as ZBA Chair. There were no other nominations. The vote was 4-0-1 (Bealo abstaining)

P. Bealo asked for nominations for Vice Chair for the coming year.

★ J. Blinn nominated D. Lloyd as ZBA Vice Chair. There were no other nominations. The vote was 4-0-1 (Lloyd abstaining)

Review/Approval of Minutes

February 28, 2019 Minutes

★ J. Gifford moved, second by D. Lloyd, to approve the minutes from the February 28, 2019 meeting. There was no discussion on the motion. The vote was 5-0-0 U/A.

PUBLIC HEARINGS:

The three (3) applications are inter-related and were read at the same time, however, they will all be considered separately for voting purposes.

#19-01: A request from Robert and Deborah Zukas for a variance from Article III, §220-9.1 requiring a residential driveway meet the side and rear setbacks for the district where the property is located, which in this case is 25'. The driveway is proposed to be located on Sweet Hill Road and will support a lot (37-1) created by

subdivision. The property is located at 108 Sweet Hill Rd, Tax Map 69, Lot 37 in the LDR & ICR Districts. The applicants are the property owners of record.

#19-02: A request from Robert and Deborah Zukas for a variance from Article III, §220-9.1 requiring a residential driveway be located in the frontage of the lot and meet the side and rear setbacks for the district where the property is located, which in this case is 25'. The driveway is proposed to be located on Newton Rd and will support a lot (37-2) created by subdivision. The property is located at 108 Sweet Hill Rd, Tax Map 69, Lot 37 in the LDR & ICR Districts. The applicants are the property owners of record.

#19-03: A request from Robert and Deborah Zukas for a variance from Article III, §220-9.1 requiring a residential driveway meet the side and rear setbacks for the district where the property is located, which in this case is 25'. The driveway supports and existing single-family dwelling, but due to a new property line proposed by subdivision of the lot, is within the side setback. The property is located at 108 Sweet Hill Rd, Tax Map 69, Lot 37 in the LDR & ICR Districts. The applicants are the property owners of record.

Present for the application were: Charlie Zilch, SEC and Associates: Robert and Deborah Zukas, property owners.

C. Zilch noted the following regarding the applications:

- The property is located at 108 Sweet Hill Rd, Tax Map 69, Lot 37
- The history of the property
 - Purchased by Robert's father John Zukas in 1951
 - In 1959 a 2.5A piece of the parcel was subdivided off
 - A forty-foot wide strip woods road on Newton Road was retained to provide access to the rear of the property
 - Robert and Deborah Zukas purchased the parcel from John Zukas in 1997 and in 1998 built the single-family dwelling that stands today.
- The existing dwelling is serviced by its own on-site well and septic
- The subject parcel is 10.23 acres with 753 feet of frontage on Sweet Hill Road and approximately 40 feet on Newton Road
- Both Sweet Hill and Newton Roads are state-owned highways
- The subject property is located in the Low Density Residential (LDR) and Integrated Commercial Residential (ICR) districts
- The majority of the site is undeveloped and wooded
- The site consists of mild slopes comprised of primarily well drained soils
- There is a large contiguous dry portion of the lot located adjacent to, and behind the existing dwelling
- The wetlands run along most of the length of the Sweet Hill Road frontage
- The property is located in the Aquifer Protection District, but in the less intensive portion of the district

- A large portion of the property is located in the ICR district, but the decision was made by the Zukas' to propose the least impactful development of the property. Their proposal is for two (2) new residential lots, instead of a commercial project.
- The subdivision proposes three (3) frontages along Sweet Hill Road
- The proposed plan meets all Town Zoning and Subdivision Review Requirements with the exception of the driveway set backs

Proposed New Lot 37-1

- Would have 3.1 acres of land with 200 feet of frontage on Sweet Hill Road
- The proposed driveway location, while located in the wetlands buffer, is the least impactful to that buffer and meets the 400-foot New Hampshire Department of Transportation (NHDOT) sight distance requirements
- The proposed driveway would be in the setback for about the first 120 feet and would then become compliant as it runs back to the generous building envelope at the back of the parcel
- This proposed driveway being within the wetlands buffer, also requires a Conditional Use Permit (CUP) from the Planning Board. That application is before the Planning Board and pending the outcome of this variance application
- The Conservation Commission (ConCom) has issued a letter of support for the CUP application

Proposed New Lot 37-2

- Would have 3.99 acres of land with 250 feet of frontage on Sweet Hill Road and 40 feet on Newton Road
- The Newton Road access meets the NHDOT 400-foot sight distance requirements, the Sweet Hill Road frontage does not and would require tree cutting which could potentially impact the wetlands
- The Newton Road access is less impactful of the wetlands and is closer to the building envelope
- The driveway for this lot is not located in the “qualifying frontage” (the frontage that qualifies the lot to be subdivided) and according to the Building Inspector, also requires variance relief and is part of this application

Remaining Lot 37

- Proposed to have 3.14 acres of land with 302 feet of frontage remaining on Sweet Hill Road
- There is an existing State-approved driveway, but with the proposed subdivision the existing driveway would be within the minimum twenty-five-foot setback
- All three (3) lots exceed the size requirements for both the zoning requirements and soils-based requirements
- All three (3) lots provide generous building envelopes
- The proposed residential subdivision is the least impactful development option for the property

J. Gifford asked if there was an overlap between the proposed property line for lot 37-1 and the existing driveway for lot 37.

C. Zilch noted that there was a slight overlap that will require an easement. He noted that would be known to anyone who purchases the property.

C. Zilch provided the following responses to the criteria for the granting of a variance:

#19-01:

- The proposed variance will not be Contrary to the Public Interest because it will allow the Zukas' full and productive use of their property with the least amount of site impact. The proposed lot will use the existing road frontage instead of proposing a new short roadway and internal driveways. The same number of lots are yielded without more the additional impacts that a new road would have on the wetlands. The short section of driveway proposed to be located in the sideline setback is the least impactful to the wetlands buffer while maintaining sightline distances required by NHDOT. With the generous lot layout, lack of wetland impact and safe driveway locations, there will not be any negative impact to the general health, safety and welfare of the general public.
- The Spirit and Intent of the ordinance is preserved because the intent is to provide adequate setbacks/buffering between neighboring lots/driveways. This set back would not be applicable if a short road was proposed instead of a single driveway. In this case the merits of avoiding the wetlands impact and entering the lot in the safest location are greater than preserving a short section of sideline setback. If necessary, a short section of fence can be installed, or evergreens planted to obtain the same objective of the ordinance. Only a short section of the driveway will be within the setback and as soon as the driveway reaches the building envelope it will be within full compliance, thereby preserving the spirit and intent of the ordinance.
- There is Substantial Justice in granting the variance because this subdivision of 10 acres of high quality land will only yield three (3) lots total. These lots are greater in size than almost every lot that surrounds it and have larger building areas for the proposed dwellings than most of the surrounding lots. The Zukas' are willing to accept that yield and are only asking for the access relief. Every effort has been made to minimize impact and provide safe access for the proposed lot. The proposal has been reviewed by, and received the support of the ConCom. Any reasonable recommendations from the Planning Board and/or its engineer to improve conditions will be considered as well. There is substantial justice in granting the variance and allowing the Zukas' full and productive use of the property, providing safe access and avoiding wetlands impact to the greatest extent possible.
- The Values of Surrounding Properties will not be Diminished because granting the variances will allow the Zukas' to subdivide the property in the least impacting manner available. Denial of the variance would only result in relocating the driveway elsewhere where greater disturbance is required.

Considering that granting the variance only enhances the proposed subdivision by limiting impacts and that granting the variance does not add to greater density, the values of surrounding properties will not be diminished.

- Literal Enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the zoning restriction does not consider particular instance such as this. When you have overlapping setbacks within the property and limitations set by NHDOT of where the driveway can commence, a situation like this will occur. The property is a quality parcel of land only limited by wetlands located along its primary frontage. Current practice is to avoid wetlands as much as possible. The hardship, inherent in the land can only be relieved by granting of the variance and allowing the placement of the driveway as proposed. All considered, denial would result in unnecessary substantial hardship if literal enforcement of the ordinance were imposed.

P. Bealo asked if the Board had any questions on this application.

#19-02:

C. Zilch noted that since the other variance requests were for nearly identical issues the responses to #19-02 were essentially the same with these exceptions:

- The proposed driveway is not intended to be located on Sweet Hill Road, the qualifying frontage for the lot. It is proposed to be within the 40-foot frontage on Newton Road
- The Newton Road frontage meets the NHDOT sightline requirements where the Sweet Hill Road side cannot without impacts to the wetlands
- The large wetland areas located along the Sweet Hill Road frontage would require substantial impacts to place a driveway there

P. Bealo noted that this was similar to the access that the Fish and Game Club has along Pollard Road.

J. Gifford added that the requirements were different at the time.

C. Zilch noted that once they established the lot lines to be in compliance there was no place they could comply with the driveway access. Other than that, the subdivision complies with all other ordinance and regulations.

#19-03:

C. Zilch noted that this was an existing driveway but once the frontage for proposed lot 37-1 was established it was discovered that there is a setback issue for the existing driveway and a small portion of pavement used for a turnaround that do not meet the setback requirements. He also noted that the driveway cannot be relocated without a new NHDOT driveway permit, which would require impacts to the wetlands to achieve their 400-foot sight distance requirements. C. Zilch added that there would be issues with

relocating the driveway any closer to Timberlane Road as well. He offered that all the same criteria stated in support of variance requests #19-01 and #19-02 were applicable for this request as well.

C. Zilch showed an aerial view (Pictometry) of the parcel and the surrounding area. He also showed some photos take to show sight distance of the two (2) proposed driveways and the existing woods road on proposed parcel 37-2.

P. Bealo, noting the woods road, asked if it was being occasionally used.

C. Zilch replied that it was most recently used when they did the test pits for the soils.

G. Ingham asked if the wetlands on Sweet Hill Road were seasonal or year-round.

C. Zilch answered that they were Group 5 soils, meaning that they are wet year-round.

J. Blinn asked where the runoff from the proposed driveways would be directed.

C. Zilch explained that ConCom requested that the driveway be tipped slightly away from the wetlands and there is an infiltration trench proposed along the side of the driveway to handle any runoff. He added that they are also considering rain gardens, gutters that flow into a cistern, RIP trenches and paved swales if needed to control runoff on proposed parcel 37-1.

C. Zilch noted that the soils are Group 3-1-1 on proposed parcel 37-2 where the driveway would be, adding the water collects and quickly dissipates, not indicative of wetland soils. He added that this has been confirmed by a soils scientist. C. Zilch noted that similar protections as proposed for lot 37-1 could be used here. He added there is proposed to be an infiltration trench on either side of the new driveway.

There was discussion about the building envelope and its proximity to abutting homes. It was suggested that someone who purchases a parcel of this size, set back off the road as it is, is usually looking for the privacy that a tree buffer provides, but it could not be guaranteed.

J. Gifford noted that he had walked the property and he believed that the construction of a driveway, with the infiltration trenches should resolve any runoff issues, particularly with water flowing to Route 108 (Newton Road). He added that once a yard is created and the greens fill in the house probably won't even be seen.

C. Zilch acknowledged that it was unusual to come before the Board with three (3) variance requests.

J. Gifford reiterated that it was the least impactful plan all the way around. He added that it was a very nice parcel, flat with dry uplands, with the least amount of road impact.

C. Zilch added that NHDOT were far more restrictive in their requirements than the Town is.

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

Sue Tomasz-Taylor, 102 Newton Road, offered that she and the abutters with her at this meeting were not opposed to the proposed subdivision, adding it was a good option for the land. She noted that their concerns were to make sure that the existing runoff that they were experiencing from a recent tree cutting, didn't get worse with the development of the property. Ms. Tomasz-Taylor noted that they were already experiencing flooding in their basements and water that flows to Newton Road and freezes in the winter. She asked what controls could be in place to assure the abutters that there wouldn't be complete deforestation that would cause additional runoff issues.

P. Bealo acknowledged the abutter's concerns and explained that the Board would have no control over a property owner who decides to clear cut his land, even without a subdivision request.

S. Tomasz-Taylor questioned if that were true even if it impacted an abutter.

P. Bealo relied that any property owner can take down their trees, if there is an impact to the abutter it becomes a civil matter, it's not in the RSAs.

J. Gifford offered with the swale put on the hill to the driveway the property will most likely be dry.

S. Tomasz-Taylor noted that water already runs off to the abutters.

J. Gifford noted that there was plenty of room to have the water run other ways.

There was additional discussion about what protections could be put in place for abutter's concerns about water runoff to their property.

C. Zilch offered that he could make a note to the subdivision plan regarding the use of gutters, cisterns and other items mentioned earlier. He noted that once it was included in the subdivision plan, and the Planning Board approves that plan, it is enforceable.

J. Blinn asked if a septic system would be a raised design.

C. Zilch replied that with the soil conditions he would anticipate that they would most likely install a stone and pipe system. He added that they are the most effective and longest-lasting systems.

S. Tomasz-Taylor offered that she felt more comfortable knowing that there could be a note added to the subdivision plan to protect the abutters.

C. Zilch noted that requiring detention ponds would mean cutting of more trees, the best solution is to keep the drainage controlled by keeping it closer to the house.

S. Tomasz-Taylor added that with the note to the plan she offered that she thought she could speak for all that the proposed subdivision is reasonable.

There was a letter from the ConCom, supporting the CUP that is before the Planning Board, submitted in the application packet. It was read for the record.

Maureen Russell (speaking for her husband Bradley as well) 100 Newton Road offered that she also supports the subdivision and expressed gratitude that the Board has listened to and heard their concerns. She noted the same issues with water running to her property as other abutters. M. Russell offered that the note to the subdivision plan made her more comfortable as well.

S. Tomasz-Taylor offered pictures of the runoff from the 108 Sweet Hill Road property.

G. Ingham asked of those pictures showed conditions that are there all the time, or just during a heavy rain.

S. Tomasz-Taylor replied that it was particularly after a heavy rain. She added that the water runs north on Newton Road and then freezes in the winter. She noted that they had suggested a culvert.

It was noted that NHDOT was not going to approve the digging up of Route 108 to put in a culvert to redirect the water.

J. Gifford explained that once the frost leaves the ground there should be no issues, it should be all dry.

R. Zukas offered that one of the pictures did not accurately depict water coming from his property, added that the puddle was before his property.

S. Tomasz-Taylor responded that it was running from the other side of the property, but was coming from the Zukas property.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking in favor or in opposition who had additional comment. There was no one and three (3) public hearings were closed.

P. Bealo explained the deliberations process, noting the Board would not receive any additional input from any parties. The decision that is made tonight will be available within ten (10) business days. If anyone thinks the Board erred procedurally or has new evidence to present, they must request a re-hearing within thirty (30) days of the Board's decision.

DELIBERATIONS

#19-01: A request from Robert and Deborah Zukas for a variance from Article III, §220-9.1 requiring a residential driveway meet the side and rear setbacks for the district where the property is located, which in this case is 25'. The driveway is proposed to be located on Sweet Hill Road and will support a lot (37-1) created by subdivision. The property is located at 108 Sweet Hill Rd, Tax Map 69, Lot 37 in the LDR & ICR Districts. The applicants are the property owners of record.

★D. Lloyd moved, second by J. Gifford, to grant the variance request for the driveway setback on lot 37-1 as stated in the legal notice.

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 applicant has chosen the least impactful of all alternatives in placing the driveway

J. Gifford offered that it was not only the best place, but the only place to avoid the wetlands. He added that ConCom's comments for sloping and grading offered additional protections.

- The application is not Contrary to the Spirit and Intent of the ordinance because there are still good setbacks and buffers in place to protect the neighbors
- There is Substantial Justice in granting the application because this is a ten-plus (10+) acre parcel that is proposed to only be subdivided into three (3) lots. There is a need for additional housing in Plaistow.
- The Surrounding Property Values should not be diminished as this is only two (2) new houses on fairly wooded lots. The houses should barely be visible if at all.
- There would be an Unnecessary Hardship in that the property owner would be unjustly penalized by the loss of a proposed reasonable use. The only other option would be to move the driveway into the wetlands. The proposed location for the driveway is most favorable for all concerned.

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

#19-02: A request from Robert and Deborah Zukas for a variance from Article III, §220-9.1 requiring a residential driveway be located in the frontage of the lot and meet the side and rear setbacks for the district where the property is located, which in this case is 25'. The driveway is proposed to be located on Newton Rd and will support a lot (37-2) created by subdivision. The property is located at 108 Sweet Hill Rd, Tax Map 69, Lot 37 in the LDR & ICR Districts. The applicants are the property owners of record.

★G. Ingham moved, second by D. Lloyd, to grant the variance for the driveway setback and location on Newton Road for new lot 37-2, as noted in the legal notice.

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

- The variance would not be Contrary to the Public Interest because, similar to the other application, the new lot will provide quality housing. It will have an access point from Newton Road, instead of impacting wetlands on Sweet Hill Road. It was noted that if the property was just a little bit wider where it accesses Newton Road, or if this subdivision had been done in an earlier time, they wouldn't have needed the variance. It was also noted that the applicant is willing to put a note on the subdivision plan regarding controls for runoff.
- The Spirit and Intent of the ordinance is observed because the proposed driveway does not encroach on another other properties or structures. The building envelope is set further back from abutter's homes.
- There is Substantial Justice in granting the variance for all the same reasons as stated in the first application.
- The Surrounding Property Values should not Diminish as long as the property is developed responsibly. The note to the subdivision plan should ensure that. It was suggested that if the current water situation is mitigated then it could possibly increase the surrounding property values.

P. Bealo encouraged the abutters to attend the Planning Board meeting regarding the actual subdivision plan.

- There would be an Unnecessary Hardship in that a three-plus (3+) acre parcel will not be available for a new house. The Town would be impacted as well.

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

#19-03: A request from Robert and Deborah Zukas for a variance from Article III, §220-9.1 requiring a residential driveway meet the side and rear setbacks for the district where the property is located, which in this case is 25'. The driveway supports and existing single-family dwelling, but due to a new property line proposed by subdivision of the lot, is within the side setback. The property is located at 108 Sweet Hill Rd, Tax Map 69, Lot 37 in the LDR & ICR Districts. The applicants are the property owners of record.

★D. Lloyd moved, second by J. Blinn, to grant the variance for the driveway setback for 108 Sweet Hill Road as noted in the legal notice.

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

P. Bealo offered that this application was the most innocuous of the three. The driveway is already established and known to anyone who might purchase the property.

- Granting the variance is not Contrary to the Public Interests because the driveway is existing and there are no plans to change it. It was noted that should the driveway have to be relocated it could mean that some trees would have to be removed to improve sight distances.
- The Spirit and Intent of the Ordinance is preserved because there will still be great separation between driveways and structures without limiting sight distances.
- There is Substantial Justice in granting the variance because there is no gain to the public and there would be a great loss to the applicant.
- The Value of Surrounding Properties would not be Diminished because the driveway is already existing, so the point is moot.
- Denial of the Variance would mean and Unnecessary Hardship in requiring the applicant to relocate the driveway at great cost and no appreciable gain to anyone. It was also noted that there could be a potential impact to the wetlands if the driveway had to be relocated.

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

It was noted that all members of the Board will be attending the Office of Strategic Initiatives (OSI) Spring Planning and Zoning Conference in June.

D. Voss offered that she is trying to put together an in-house training on plan reading for both the Planning Board and the Zoning Board.

There was no additional business before the Board and the meeting was adjourned at 7:54 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant