



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
June 27, 2019

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

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

Ethan Conley was introduced as observing this meeting as a potential alternate to the Board.

★T. Fisher was appointed as a voting member.

Review/Approval of Minutes – May 30, 2019 Minutes

★D. Lloyd moved, second by J. Gifford, to approve the minutes from the May 30, 2019 meeting. There was no discussion on the motion. The vote was 4-0-1 (Fisher abstaining).

PUBLIC HEARINGS:

#19-07: A request from Brendan Tirrell and Erica Lang-Tirrell, for a Special Exception under Article X, to allow a home occupation, namely a day care. The property is located at 12 Park Av, Tax Map 41, Lot 60 in the VC District. The applicants are the property owners of record.

Brendan Tirrell, 12 Park Av, was present for the application. He noted that his wife would like to have an in-home daycare for 2-3 children in addition to their two (2) daughters.

The Board and Mr. Tirrell reviewed the requirements for a home occupation under Article X noting the following:

- In-home daycares (not more than six (6) children) are allowed as a home occupation under §220-66.B
- There are no uses that would be noxious or injurious, there are no hazardous uses
- The applicant is the property owner
- The daycare use is proposed to take up +/-20% of the living space

- The daycare use will not change the residential character of the dwelling
- The applicant does not propose a sign at this time
- There are no other employees for the business use
- There will not be any outside merchandize displayed
- There is adequate parking for the property owner and customers
- There will not be any deliveries that are inconsistent with those for a normal residential use (Amazon)
- There are no covenants in the deed that would preclude a home occupation

It was noted that the home occupation is subject to periodic inspection by the Building Inspector. There was no recommendation from the Building Inspector that this applicant obtain Planning Board site plan approval.

The applicant was informed that should the home occupation be approved it would be his responsibility to renew it every three (3) years and that no renewal notices are sent.

D. Lloyd asked if there were any questions from the Board, there were none. He asked if anyone was speaking in favor of or in opposition to the application. There was no one.

D. Lloyd explained the deliberation process, noting that once the public hearing was closed there could not be any additional input from either the applicant or other interested parties. He noted that a written notice of decision would be sent within five (5) business days, but no permit could be issued for thirty (30) days to allow for an appeal period.

There was no additional input and the matter was closed.

DELIBERATIONS

#19-07: A request from Brendan Tirrell and Erica Lang-Tirrell, for a Special Exception under Article X, to allow a home occupation, namely a day care. The property is located at 12 Park Av, Tax Map 41, Lot 60 in the VC District. The applicants are the property owners of record.

★ J. Gifford moved, second by J. Blinn, to grant the application for a special exception to allow a daycare home occupation at 12 Park Av.

J. Gifford noted that the location was a large parcel and on a dead-end part of the street, so there shouldn't be any issues with abutters.

It was also noted that the applicant said they would have less than the allowed six (6) children, there are no parking issues and it is not a busy street.

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

PUBLIC HEARINGS CONTINUED

#19-08: A request from Bond Worthington for a variance from Article V, §220-32I, to allow a structure to be built 16' 5½" from the front property line, where 35' is the minimum required. The property is located at 31 Sweet Hill Rd, Tax Map 61, Lot 24 in the MDR district. Anthony and Kelly Golia are the property owners of record.

Bond Worthington, Boston, MA and Anthony and Kelly Golia, 31 Sweet Hill Road were present for the application.

B. Worthington offered the following information to the Board in support of the application for variance:

- The application is for a variance to allow the homeowners to build a wrap-around porch on the front of their house
- The existing footprint of the house shows that the structure is 22' 7" from the front property line, the porch would put them 16' 5.5" from that line
- The property line is a significant distance from the edge of pavement giving the illusion that there is more frontage than there is
- The applicant is seeking the porch to give coverage to the front door which is currently exposed to all weather

T. Fisher asked what the age of the house is.

B. Worthington replied that the original structure had been constructed in the 1850's but there is a porch that was added in the 1920's.

B. Worthington read through his response to the criteria for the granting of a variance, noting the following for the Board:

- The proposed variance will not be Contrary to the Public Interest because the proposed front porch is designed to match the existing character of the house and the neighborhood
- The Spirit and Intent of the ordinance is preserved because the density of the neighborhood will be preserved despite encroaching on the front set back due to the generous side yards. The proposed porch will feature open columns and will have minimal visual impact on the overall massing of the existing house
- There is Substantial Justice in granting the variance because the existing front door is unprotected from driving rain and not being able to construct a porch in this area due to the front setback is a practical difficulty for the owner
- The Values of Surrounding Properties will not be Diminished because the side yard setback is more than double the required distance on the right side and more than six (6) times the required distance on the left side. The proposed porch will match the exiting character of the house and the neighborhood
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because this house could not be improved to protect the existing front entry from the elements

J. Gifford asked what the distance was from the property line to the edge of pavement. It was noted to be approximately sixteen (16) feet.

T. Fisher noted that there would not be any additional living space as part of this plan.

D. Lloyd asked if the Board had any additional questions.

G. Ingham noted that the Staff Report requested that the applicant be informed that a certification of the location of the porch would be required as part of the building permit process.

B. Worthington acknowledged the requirement.

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

DELIBERATIONS

★ J. Gifford moved, second by T. Fisher, to grant the application for a variance at 31 Sweet Hill Road to allow a front porch to be built within 16' 5.5" to the front property line.

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

- The proposed variance is not contrary to the Public Interest as it was noted that Sweet Hill Road is a state road and there is adequate setback from the road
- The Spirit and Intent of the ordinance are preserved because this is an open structure, will not be very high and does not add to any living space
- There is Substantial Justice in allowing the applicant to build a porch that will protect their front entrance from the elements as well as aesthetically enhance their property
- The Values of Surrounding Properties will not be diminished because this will enhance the property, which may enhance surrounding property values, so it is a win/win
- Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship because the owner would not be allowed to enhance or protect the front of their home. The porch will add value to the property.

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

PUBLIC HEARINGS CONTINUED

#19-09: A request from Blinn Family Realty, LLC for a variance from Article III, §220-16.B to allow display and sales of five (5) motor vehicles within 1,000 feet from another motor vehicle dealership. The property is located at 38 Westville Rd, Tax

Map 27, Lot 40 in the C1 District. Blinn Family Realty, LLC is the property owner of record.

J. Blinn recused himself from the pending application as he is the applicant.

J. Blinn requested that his matter be continued to the next meeting in hopes that there will be a five (5) member board able to hear his case.

It was stated that ZBA Matter #19-09 would be continued to July 25, 2019, 6:30PM, same location.

REQUEST FOR RE-HEARING

#19-05: A request from Henry Corey for a variance from Article V, §220-37, to allow the land area within the LDR zone to be allowed to apply towards the minimum lot area requirements of §220-32E C:2 which requires 40,000SF per dwelling unit. The property is located at 57 Sweet Hill Rd, Tax Map 62, Lot 12 in both the MDR and LDR districts. Peter & Karen Ray are the property owners of record.

A letter from Kevin Hatch LLS, Cornerstone Survey Associates, Inc. was read into the record. It was also noted that there were letters from three (3) real estate agents and a tax map that depicted locations of the other duplexes or where duplexes could be built. That map was shown on the projector screen.

The letter noted two (2) reason for the request for re-hearing

- The Board erred in its procedure by not discussing all concerns in the public portion of the meeting, which did not allow the applicant the opportunity to address the concerns.
- The Board's decision to deny the application were based upon two (2) items that were discussed primarily after the public portion of the meeting had been closed
 - o Allowing the duplex on less that the required land area would be contrary to the spirit and intent of the ordinance, particularly in a neighborhood of single-family houses
 - o A duplex/condex in a neighborhood of single-family homes could have an adverse impact on surrounding property values

The request included letters from local real estate agents offering the a duplex/condex would not adversely impact property values. The request also noted the location and number of duplex-type homes within ½ mile of the subject property. Parcels that were large enough that a duplex could be constructed on, without a permit, were also called out in the re-hearing request letter and supporting documents.

DELIBERATIONS:

★ J. Gifford moved, second by J. Blinn, to grant the request for re-hearing on the variance application for 57 Sweet Hill Rd.

The Board was reminded that the issue at hand is whether or not to grant a re-hearing request, not to re-litigate the variance application. If the re-hearing request were to be granted the abutters would be re-notified and the additional information in the re-hearing request would be presented publicly.

G. Ingham noted in the minutes were the matter of property values and the spirit and intent of the ordinance were discussed as part of the public hearing process.

D. Lloyd offered that the letters from real estate agents only expressed an opinion, which he didn't feel was any different than the Board expressing their opinion.

J. Gifford added that the letters from the real estate agents did not address the issues that are caused by the parcel being split-zoned in both the Low Density Residential (LDR) and Medium Density Residential (MDR) districts.

T. Fisher offered that the bigger principle is that the property is split into two (2) different districts.

D. Lloyd noted that there was nothing new brought to the table in this request.

G. Ingham added that there was nothing that would have changed his vote, noting that the examples that were provided were not in split districts.

There was no additional discussion on the motion. The vote was 0-5-0 and the motion to grant was defeated as the Board disagreed that there was a procedural error and there were no new evidence submitted that the Board didn't already consider or that would have changed their vote.

There was no additional business before the Board and the meeting was adjourned at 7:07 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant