



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

ZONING BOARD OF ADJUSTMENT
August 25, 2016

The meeting was called to order at 7:03 p.m.

Roll Call: Peter Bealo, *Chair, Excused*
Tim Fisher, *Vice Chair*
Jim Allen
Joyce Ingerson
Dan Lloyd
Martha Sumner, *Alternate*
John Blinn, *Alternate (non-voting)*

★ M. Sumner was appointed voting members for the meeting.

Minutes of May 26, 2016

★ J. Ingerson moved, second by M. Sumner, to approve the minutes of the May 26, 2016, meeting. There was no discussion on the motion and the vote was 3-0-2 (Allen and Sumner abstaining).

T. Fisher explained the procedure for the hearings. Each matter will be heard and then deliberated on before moving on to the next matter.

#16-03: A request from Jay B. Hennigan, II for a special exception under Article X, All Sections, to permit a home office for a mobile lawn mower repair business. The property is located at 3 Bittersweet Dr., Tax Map 39, Lot 56 in the VC District. The property owners of record are Jay B. and Caren E. Hennigan.

Jay B. Hennigan, II was present for the application and noted the following for the Board:

- He would like to be able to place a business sign in front of his house
- He's been in business on a part time basis for more than ten years
- He would like to become a more legitimate business

T. Fisher asked if his business was mostly mobile. It was confirmed that it was. Mr. Hennigan works out of the back of his truck, which is a Ford Ranger pick-up.

T. Fisher asked where the parts for the repairs were delivered to.

J. Hennigan. II replied that some come to his house, but most are delivered to the customer location or are picked up at the store.

T. Fisher asked how the old parts were disposed.

J. Hennigan, II replied that he takes parts to the scrap yard and he takes oil to either Auto Zone or Walmart for disposal.

J. Allen asked if Mr. Hennigan had a trailer.

J. Hennigan, II replied that he had a small building on the back of the property behind a fence.

J. Hennigan, Sr., 3 Bittersweet Dr, noted that they do have a small trailer, but it's not used for the business, it's used to remove brush. The business just uses the pick-up truck.

T. Fisher stepped through Article X (Home Occupation Ordinance) and asked Mr. Hennigan to respond to each item:

- The business qualifies for home occupation under §220-66C
- There are no processes that would be noxious or injurious be either noise, waste or emission that would be harmful to the neighborhood
- No work related to the business is done on the premises
- Any deliveries to the premises will be made as for regular residential service
- There is a letter of authorization from the property owner
- The home business will not change the residential character of the dwelling
- There will be only one business-related vehicle, a pick-up truck
- There will be one (1) sign and a permit is required before the sign is installed
- The business is a sole-proprietorship with no other employees
- There is adequate off-street parking
- There is no outside storage of merchandise
- The only storage of materials would be a small can of gasoline
- There are no restrictions in the deed that would prevent a home occupation
- This is not part of a condo or home owners association and therefore no additional authorization is required
- This will be the only home business located on the property.

The applicant was informed of the possibility of inspections under the requirements of the ordinance.

J. Hennigan II noted that he has lived most of his life in Plaistow and he was just seeking to make his part-time business into a full time-one.

T. Fisher 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.

DELIBERATIONS

★ M. Sumner moved, second by J. Allen, to grant the request for a special exception under Article X to permit a home occupation at 3 Bittersweet Dr. as noted in the legal notice.

T. Fisher summarized the application noting the following:

- Standard home occupation request
- The sign will require a permit and will need to conform with the ordinance
- Deliveries will be standard for residential
- Waste will be disposed of either at a scrap yard or acceptable standards for oil disposal
- There are no covenants in the deed
- There was no opposition from abutters

★ There was no more discussion on this matter. The vote was 5-0-0 U/A.

There was no further business before the Board. The meeting was adjourned at 7:29 p.m.

#16-04: A request from Ronald Yeager for a variance from Article V, Table 220-32I, to permit a covered walkway to be constructed within 17 feet of the front property line where 35 feet is the minimum required (18 foot variance request). The property is located at 16 Kelley Rd, Tax Map 31, Lot 29 in the MDR District. The property owners of record are The Hill Realty Trust, Cynthia D and Christine D. Hill, Trustees.

Ronald Yeager and Bertha Hill, residents of 16 Kelley Rd., were present for the application.

R. Yeager explained that Ms. Hill was having a difficult time getting from the car into the house in the winter time. He noted that the dwelling was built prior to zoning and too close to comply with current setbacks. He would like to construct a covered walkway that would be six (6) feet wide by thirty-two (32) feet long.

T. Fisher asked how old the house was.

R. Yeager replied that the original house was set much farther back on the property and what is now the house was originally the barn.

J. Ingerson asked if it was a deck with a roof.

R. Yeager answered that it was a covered walkway.

J. Ingerson suggested that the building permit application be clarified that it is a covered walkway.

D. Lloyd asked if the decking was elevated.

R. Yeager responded that it was eight (8") inches off the ground.

T. Fisher noted that the existing house itself does not meet current zoning setback requirements.

R. Yeager noted that there used to be some large Yew trees located in the front of the house, which he removed to create the walkway.

T. Fisher asked if any other options had been considered.

R. Yeager replied that the only other way would be to go past the walkway forty (40) feet to the patio door, which as the only door when the house as originally built.

The Board reviewed the plan with Mr. Yeager who showed them where is seeking to put the walkway and where the other door was located. Mr. Yeager also shared pictures of the property with the Board.

J. Ingerson asked if there would be anything that would impede others.

R. Yeager replied that one neighbor was 75' away and the other was 150-200' away.

M. Sumner noted that it appeared the project had already started.

D. Lloyd asked about the roof.

R. Yeager responded that it was shingled to match the house.

J. Ingerson asked if the footings were poured.

R. Yeager answered that he has sonar tubes but they not yet been poured.

R. Yeager gave his responses to the variance criteria noting the following:

The variance would not be contrary to the public interest because:

- It would add value to the house
- It would make it safer to get from the driveway to the house in bad weather
- It is better looking than the bushes that were there

The variance will not be contrary to the spirit and intent of the ordinance because:

- It will allow them to get in and out of the house to the driveway safely in bad weather

There will be substantial justice by granting the variance because:

- There will be safety in bad weather

There will be no decrease in surrounding property values:

- The value of this property will increase

Denial of the variance would be a hardship because:

- It will make it more difficult to go in and out in winter and rain.

T. Fisher asked if the Board had any questions.

J. Ingerson asked if there were any plans to enclose the walkway in the future.

R. Yeager replied that they would not. The walkway is just because they have a hard time getting around in the winter. He added that if they are not granted the variance he's not sure what they will do.

J. Ingerson noted that she takes issue with starting a project before coming to the Board for relief. She added that just because a project is started it does not affect how she makes a decision.

T. Fisher asked if there was anyone speaking in favor of, or in opposition to, the application by R. Yeager, there was no one and the matter was closed.

★M. Sumner moved, second by J. Ingerson to grant the variance request for 16 Kelley Rd as noted in the legal notice.

T. Fisher summarized the variance request noting the following:

- The application is not contrary to the public interest because it will enhance the safety of the property
- The application is not contrary to the spirit and intent of the ordinance because there is no other reasonable way to provide a safe walkway
- There is substantial justice in granting the application because there is no loss to the general public
- There is no negative effect on the surrounding property values, there could be an increase in the value of this property
- There is a hardship to providing a safe walkway to this dwelling as there is not thirty-five feet available for it and there is not a reasonable alternative

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

#16-05: A request from William Joray for a variance from Article V, Table 220-32.E.C(2), to permit a lot line adjustment that would result in a lot that is less than 160,000 sq ft, which is required for the 4-unit building on the current lot. The property is located at 6 Maple Av, Tax Map 41, Lot 29 in the MDR District. The property owner of record is William L. Joray.

D. Voss noted that if this application for variance is approved the applicant will still need to go to the Planning Board for formal approval of the lot line adjustment.

Charlie Zilch, SEC and Associates, was present for the application.

C. Zilch noted the following information about the application:

- The current parcel is 165,785 sq ft
- There is 331 feet of frontage on Maple Ave and 52 feet of frontage on Witch Lane
- The property is completely located within the Medium Density Residential (MDR) zoning district
- The current structure on the property is four (4) units; three (3) one-bedroom units and one (1) two-bedroom unit
- The property is serviced by its own well and septic
- The proposed plan is to convey 10,047 sq ft to the abutter at 13 Witch Lane (Tax Map 42, Lot 32) to allow him room to build a residential garage
- The Witch Lane frontage was once intended to allow for access to subdivide the parcel, which the applicant can no longer do
- The property meets the current zoning requirements of 40,000/dwelling unit. The proposed lot line adjustment would put them at 155,738 sq ft, slightly under the minimum requirement

T. Fisher asked if by “convey” the applicant meant sell. It was confirmed that it would be sold to the abutter.

J. Ingerson questioned why the abutter didn’t simply apply for a variance for the garage.

C. Zilch answered that the garage would extend over the property line, not just into the setback. He added that this would also discontinue any potential access to the property from Witch Lane.

C. Zilch provided additional information:

- The lot calculations still meet with all NHDES (New Hampshire Department of Environmental Services) septic requirements
- The lot line adjustment does not provide the abutter with enough land to subdivide for additional units, only room for a garage
- There will be no additional sewage loading for either parcel

T. Fisher asked if there were any additional questions from the Board. There were none. He asked if there was anyone speaking in favor of the application. There was no one.

T. Fisher asked if there was anyone speaking in opposition to the application.

Dennis Marcotte, 165 Main St, noted that the applicant had been before the Board before regarding this property.

C. Zilch explained that previous application was related to a proposed subdivision. He added that this application would not change anything for Mr. Joray only for the abutter on Witch Lane, allowing him to construct a garage.

D. Marcotte expressed concerns about drainage, wells, and runoff, noting there was an underground stream that fed local wells. He added that he was concerned that there would be additional septic causing contamination to wells.

C. Zilch reiterated that the only purpose for the lot line adjustment would be to allow the abutter on Witch Lane to be able to build a residential garage. He added that he has marked off the wetlands and the new garage would conform to all wetlands setbacks.

D. Marcotte asked if it were going to be a residential garage.

D. Lloyd offered that if it were a commercial garage the abutter would have to go to the Planning Board and probably the Zoning Board as well.

D. Marcotte offered that he would protect area well “until he dies.”

C. Zilch pointed out the area on the plan where a residential garage could be located. He added that there would be no additional flow with the garage and the land could support the use.

T. Fisher noted that the existing structure would not be increased without septic provisions.

Gary Erickson, 11 Witch Lane, expressed concern about the location of a garage. He noted that there was a lot of water there in the spring.

DELIBERATIONS:

★J. Ingerson moved, second by T. Fisher to grant the variance request for 6 Maple Ave as noted in the legal notice.

T. Fisher summarized the application noting the following:

- There is nothing contrary to the public interest as SEC has done the septic calculations for the existing use and there are no loading issues
- The application is not contrary to the spirit and intent of the ordinance, which is to provide enough land to support the structures located on the land. The 10,000 sq ft doesn't affect the sewage loading calculations according to NHDES requirements
- There is substantial justice in granting the variance as the major concern is the adequacy of the septic. The calculations have been done to prove that the system is still viable. There is no loss to the general public with the lot line adjustment. The benefit is to the abutter who will be able to build a residential garage.
- There will be no negative impact to residential property values with the lot line adjustment
- While Mr. Marcotte's concerns over protection of the area wells and wetlands are valid, the lot line adjustment will not adversely affect them. There would be a hardship to the abutter if he is not able to construct his garage because it would cross over the property line.

J. Ingerson offered that she was confident in the engineer's calculations that the structure (abutter's residential garage) will not impact the wells. She reminded that the lot line adjustment plan will still have to go to the Planning Board for approval.

M. Sumner expressed concern that a new residential garage would cause additional water.

There was not additional discussion. The vote was 4-1-0 (Sumner dissenting).

#16-06: A request from FAOCOM, LLC/Brian Orlando for a variance from Article IV, §220-21 B&C to permit paved parking within the 50'/75' wetlands buffers but outside of the 25' "no disturb" area. The property is located at 85 Plaistow Rd, Tax Map 27, Lot 30 in the MDR District. The property owner of record is FAOCOM, LLC.

D. Voss noted that if this application for variance is approved the applicant will still need to go to the Planning Board for formal approval of an amended site plan.

Charlie Zilch, SEC and Associates, was present for the application. He noted that following information for the application:

- The property is owned by FAOCOM, LLC, who also own the adjacent property known as Diesel World
- The location of 85 Plaistow Road is currently a residential duplex rental property
- The property is located in the Commercial 1 District
- The parcel is approximately 5 acres with 164 feet of frontage
- There is a single driveway
- There is a man-made pond 600 feet from Little River
- The surrounding soils are poorly drained and very poorly drained

- The proposed plan will be to raze the duplex, removing the septic and well to build display parking for 33 sale vehicles
- There will be a one-way access through the property
- The new pavement meets the 25 foot no disturb wetlands buffer, but there are proposed intrusions into the 50 foot and 75 foot no structure wetlands buffers
- Conservation Commission (ConCom) has walked the site and have sent a letter of support
- The application balances the need for additional parking and still protects the wetlands
- The parking area will be curbed along the wetlands and the water will be directed to a subsurface infiltration system that will include an oil/water separator

C. Zilch explained the technical details of the subsurface infiltration system. He noted how all runoff would be treated before being infiltrated into the ground.

- The property at 85 Plaistow Road will be built up to meet the Route 125 grade
- The current duplex is in a state of disrepair and business for the dealership is booming so there is a need for extra display parking

J. Ingerson asked where the snow would be plowed to.

C. Zilch noted that it would be to the backside of the property. He noted on the plan where there would be a fence that would protect the wetlands. C. Zilch added any snow that could not properly be handled on site would have to be removed from the site.

There was discussion of how the infiltration system is maintained. It was noted that the Planning Board would require a maintenance program be put in place for the system.

D. Lloyd noted that these vehicles were not just regular cars, but diesel trucks, which were known for leaking.

C. Zilch offered that ConCom had the same concerns and that's the reason for the oil/water separation apparatus part of the infiltration system.

D. Lloyd asked if there would be a curb cut to Route 125.

C. Zilch noted that there would be a shared access with Chart as part of the NHDOT (New Hampshire Department of Transportation) Route 125 plan. There will be no direct curb cut from Route 125 into the proposed parking area.

T. Fisher asked what the limitations of the infiltration system were in a heavy rain event.

C. Zilch explained there was an emergency overflow. The system does not allow for back wash.

T. Fisher asked what happens when it clogs.

C. Zilch explained the process of the infiltration system and how it works in heavy rain.

D. Lloyd asked about salt.

C. Zilch offered there was a note on the plan to address the snow removal and salt issue. He added that the plan will still have to go to the Planning Board's engineers for review of all the technical aspects and compliance with Federal, State and local regulations. He added that NHDES was pushing for these types of infiltration systems because they are very effective in treating runoff subsurface.

C. Zilch offered the following response to the variance criteria:

- The proposed variance will not be contrary to the public interest because it will allow Mr. Orlando the pull productive use of the site without diminishing the quality and size of the wetland complex. This will not be contrary to the public interest because the proposal will be less impacting than the existing use. Currently the lot supports and existing duplex dwelling with yard space established right up to the wetland limits and provides very little buffering. Additionally, the small upland area on which the dwelling is situated supports a raised septic system that is within the wetlands setback. The change from residential use to non-habitable commercial use will relieve disturbance within the 25' no-cut buffer and eliminate nitrate loading. All considered, there will be no negative effect to 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 from site uses that may adversely affect the wetland complex. In this particular case, the wetlands for which we are seeking the variance, is a mix of previously disturbed ponded areas, poorly and very poorly drained wetlands that are located adjacent to an existing residential duplex dwelling. The plan to remove the residential use and replace it with a non habitable commercial parking area that contains, treats and releases stormwater runoff by means of infiltration supports the spirit and intent of the ordinance. Ultimately, once the parking area is constructed the buffer between the limits of construction and wetland will be allowed to return to its natural state. This natural buffer when considered with the stormwater treatment designed, will improve water quality and overall quality of the wetland complex. Therefore the spirit and intent of the ordinance, protection of the wetlands, will be maintained by granting the variance.
- There is substantial justice in the granting of the variance because the variance will allow Mr. Orlando the most cost effective means of achieving his goals with the least about of disturbance to the site or disruption to his business and the surrounding properties. By granting the variance and 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. Additionally, this request is similar to the variance granted to the previous owner of the property of abutting lot 27-29 (Diesel World) in March of 2000. In this

case the Board granted a variance to allow a parking lot expansion within the wetland buffers (Case 00-11, 12 & 13).

- The values of surrounding properties will not be diminished because the request would allow for construction of a small additional parking area intended to support the existing automotive dealership. This addition does not increase site use that would be detrimental to the wetland complex and in fact would improve buffering and eliminate nitrate loading. This change of use, from residential to commercial is in keeping with the existing district for which it is zoned and would not result in diminution of surrounding property values.
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because this site, though large in size, is comprised of mostly wetland soils with the only usable area located along the roadway frontage. The existing duplex dwelling is located within this area and is adjacent to the commercial uses on either side. These commercial uses have been built up to the current elevation of the highway that serves them, whereas this site has not. The proposed plan to remove the dwelling and construct a parking area to serve the existing dealership is the least impacting and most productive use of the site. Other uses such as replacing the building with a commercial building would require much greater site disturbance, increased costs and no appreciable gain in respects to the wetland protection. Denial would be an unnecessary hardship due to the uniqueness of the lot in relation to the existing wetlands and lack of a reasonable alternative location.

T. Fisher 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.

DELIBERATIONS:

★J. Allen moved, second by J. Ingerson to grant the variance request for 85 Plaistow Road as noted in the legal notice.

T. Fisher summarized the application noting the following:

- The application is to have paved parking within the 50 and 75 foot wetland buffers, but outside of the 25 foot no disturb buffer area
- The existing dwelling would be razed along with the septic and well
- The plan will provide greater protection to the wetlands than the existing use

D. Lloyd suggested amending the motion to include a “no salt” requirement for the parking area.

The motion was amended and seconded to include a prohibition against use of salt in the parking area.

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

There was no additional business before the Board. The meeting was adjourned at 8:35 p.m.

Respectfully Submitted,

Dee Voss
Administrative Assistant