



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
September 24, 2020

Prior to the official opening of the meeting the ZBA paid tribute to retiring Chief Building Official, Mike Dorman.

The meeting was called to order at 6:37 PM

Peter Bealo, Chair, read the following:

The Plaistow Zoning Board of Adjustment, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically, and these reasons shall be reflected in the minutes.

Please note that there is no physical location to observe and listen contemporaneously to the meeting which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order we are confirming that we are:

a) Providing public access to the meeting by telephone:

Members of the public wishing to attend this meeting electronically may call the following conference call number 1 (562) 247-8422 Access Code: 900-532-276

b) Additional public access by video or other electronic means will be available as follows:

We are utilizing the GoToWebinar platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during the meeting through the GoToWebinar platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by clicking on the following webinar address <http://plaistowaccess.com/zb-remote>

c) Providing public notice of the necessary information for accessing the meeting

Legal notice was sent to all abutters for each application and was published in the Eagle Tribune newspaper, with information on how to access the meeting.

d) Providing a mechanism for the public to alert the public body during the meeting that a member of the public wishes to speak or be recognized during any public comment or public hearing.

The GoToWebinar platform has both a “raise your hand” and Q & A feature that allows attendees to alert that they have a question. Please note that all questions submitted through the Q & A feature must contain your address and will be read into the record.

e) Other access to the meeting: The meeting will also be broadcast on Plaistow Access Cable Channel 17 and will be livestreamed on the town website at www.plaistow.com.

f) In the event that the public is unable to access the meeting via conference call or GoToWebinar, the meeting will be adjourned and be rescheduled at a later time.

Roll Call: Peter Bealo, *Chair – attending remotely, no others present*
Dan Lloyd, *Vice Chair, attending remotely, no others present*
John Blinn, *excused*
Jonathan Gifford, *attending remotely, no others present*
Gary Ingham, *attending remotely, no others present*
Jim Unger, *Alternate, attending remotely, no others present*

Also attending remotely: Dee Voss, *Administrative Assistant, no others present*

★ *Jim Unger was appointed as a voting member for this meeting – 5 voting members.*

Review and Approval of Minutes from August 27, 2020 Meeting

★ *P. Bealo moved, second by J. Gifford to approve the minutes of the August 27, 2020 meeting. There was no discussion on the motion. Roll Call Vote: P. Bealo – abstaining; D. Lloyd – yes; J. Gifford – yes; G. Ingham – yes; J. Unger – yes. The vote was 4-0-1 and the minutes were approved.*

PUBLIC HEARINGS:

#20-20: A request from Rte 125 Cottage Plaza, LLC and Gerald Carbone for a variance from Article V, §220-31 and Table 220-32B(B) to allow the conversion of the first-floor commercial space to residential apartments, a non-permitted use. The property is located at 93A Plaistow Road, Tax Map 27, Lot 26-1 in the C1 District. Gerald R. Carbone is the property owner of record.

Thomas MacMillan, MacMillan Law Offices; Gerry Carbone, Rte. 125 Cottage Plaza and Angelo Petrozzelli, Design Partnership Architects, Inc. were present remotely for the application.

T, MacMillan offered the following information regarding the application:

- The building is a two-story structure
- First floor currently has a restaurant space, a nail salon and two, one-bedroom apartments
- Second floor currently has four, one-bedroom and one, two-bedroom apartments

- The proposal is to convert the first-floor commercial space into four, two-bedroom apartments for a total of eleven residential units
- The reason for the variance request is that residential is no longer a permitted use in the Commercial-1 (C-1) district
- Renting the space commercially has not been economically sustainable for the property owner
- There is a lack of available rental housing and an excess of available retail space in Plaistow
- The property meets all other requirements of the zoning ordinances

T. MacMillan offered the following in support of the criteria for the granting of a variance:

- The variance will not be contrary to the Public Interest and the Spirit and Intent of the Ordinance are preserved because there is no negative impact to the health, safety and welfare of the community, in that there are already grandfathered residential apartments and there is nothing proposed to detract from the essential character of the locality. The ordinances allow for mixed uses in other zones that are designed to promote commercial uses.
- There is Substantial Justice in granting the variance because the general public does not gain anything from the denial of the variance, therefore the loss to the applicant would not be outweighed by a loss that doesn't exist. The public loses economic development with the unoccupied commercial spaces.
- The proposed conversion to apartments will not negatively affect the Values of Surrounding Properties as this property would be upgraded and renovated making the area more aesthetically appealing. Eliminating unoccupied building will remove visual blight, additional residences will reinvigorate consumer traffic to the existing commercial businesses.
- The property has special conditions, specifically that it is a grandfathered mixed use, with the building already housing residential units. Since it is already a mixed use, no fair and substantial relationship exists between the ordinance provisions prohibiting residential use. The conversion of the first floor to from retail to residential is therefore a reasonable use. The renovation of the property in conjunction with the conversion is reasonable and beneficial to the public. Thus, literal enforcement of the ordinance creates an unnecessary hardship.

It was noted that an appraiser report, pictures and an architectural rendition had been provided by the applicant and distributed to the Board.

P. Bealo offered that he had completed a Workforce Housing Analysis for the Town in 2019 and the Town is currently 550 units over the State requirements for workforce housing, so the housing argument wasn't as compelling to him as the making a partially non-conforming use completely non-conforming was.

T. MacMillan offered that he was referring to the shortage of residential rental units in general, not workforce housing. He added that economic circumstances have not made

the building sustainable for commercial rental and that allowing the variance would get the property renovated to be more aesthetically pleasing and provide a needed benefit to Plaistow of needed rental units and an increase to the tax base.

G. Ingham noted that the higher residential use would mean more septic and water usage and questioned if the land was capable of handling it.

T. MacMillan suggested that such things would be beyond the parameters of the variance.

G. Carbone had difficulty with his access and was unable to connect with audio. The PIN was sent to him and was called out over the remote access.

D. Voss noted that, should the variance be granted, the applicant would then have to go to the Planning Board for review of an amended site plan, where things like septic and water would be discussed.

G. Ingham asked if there was the ability to have a second access to the property other than from Route 125.

T. MacMillan replied that it was something that they could consider if they were approved.

J. Gifford asked if there would be any green space provided for the units.

A. Petrozzelli offered that he had provided the architectural rendering. The drawing shows a small courtyard in front of each unit.

P. Bealo suggested that the question was more for the Planning Board than the ZBA.

D. Lloyd asked if they would be razing the front of the building.

A. Petrozzelli responded that they would be pushing the parking out further and angling it to make room for the courtyard.

D. Lloyd offered concern about pushing the parking closer to the gas pump, noting that he uses that gas station and it can get busy at times.

P. Bealo asked if the Board had any additional questions, there were none. He asked if there was anyone speaking on favor of, or in opposition to the application. It was noted that there was no one in the remote access with a "hand raised" or a question indicated.

P. Bealo explained that once the public hearing was closed and the Board enters deliberations, there could not be any additional input. He asked again if there was anyone who wanted to comment. There was no one and the public hearing was closed.

DELIBERATIONS:

★ G. Ingham moved, second by D. Lloyd to grant the application for a variance from Article V, §220-32B(B) allow a residential apartment use on the first-floor for the property located at 93A Plaistow Road, Tax Map 27, Lot 26-1 with the following condition(s):

- **Application for Amended Site Plan must be filed with the Planning Board within 90 days of the date of this Board's approval**

Discussion:

J. Unger offered that he did have concerns about making this building fully non-compliant.

P. Bealo noted that the condition of the commercial portion of the building was not good and he didn't want to grant a variance to have the building not be improved.

J. Gifford suggested if there was money to do a renovation of the property it should have been done by now to enhance the commercial potential of the property.

P. Bealo reminded that if a variance is granted it goes with the property forever.

J. Gifford added that more residential is not a bad thing, just not in the heart of the commercial district.

P. Bealo offered that the commercial-residential mixed uses allowed in the Commercial II and Village Center districts were irrelevant to this matter and that it wasn't up to the Board to make new law.

There was discussion around the idea that offering two-bedroom units could mean that there would be children living there. It was discussed that there wasn't green space for them and the cross-over traffic of the gas station/convenience store was a safety concern for a residential use with children.

The Board made the following findings in this matter regarding the variance criteria:

- The proposed variance will be contrary to the Public Interest because, while in general more apartments would be a good thing, additional apartments that share a parking lot with a gas station is not in the public interest.
- The Spirit and Intent of the Ordinance will not be preserved by taking a location that is already more than 50% non-conforming and making it 100% non-conforming.
- While there may be a minimal gain to the public with a few additional apartment units, there is not Substantial Justice in that there is a greater loss to the safety of the site.
- No decrease in Surrounding Property Values was determined. It was noted that the architectural renderings, if implemented, would certainly provide for an increase in the value of this property.
- Converting to residential units as the best economic use of the property was found to be a flawed argument for unnecessary hardship. The Board didn't see that efforts had been made to renovate the property to attract commercial business.

Roll Call Vote: D. Lloyd – no; J. Gifford – no; G. Ingham – no; J. Unger – no; P. Bealo – no. The vote was 0-5-0 and the motion to grant the variance does not pass.

#20-26: A request from 78 Plaistow Road, LLC (Bob Leavitt) for a variance from Article V, Table 220-32B, to allow use of a pre-existing residential apartment by the owner. The property is located at 103 Plaistow Road, Tax Map 28, Lot 21 in the Commercial 1 District, where residential uses are not permitted. The applicant is the property owner of record.

#20-27: A request from 78 Plaistow Road, LLC (Bob Leavitt) for a variance from Article 111, §220-16.D, to allow use of a pre-existing residential apartment by the owner. §220-16.D does not allow uses incompatible with Motor Vehicles Sales on lots where there are such activities. The residential use was deemed as incompatible with Motor Vehicle Sales by the Code Enforcement Official. The property is located at 103 Plaistow Road, Tax Map 28, Lot 21 in the Commercial 1 District. The applicant is the property owner of record.

Bob Leavitt, 78 Plaistow Road, LLC was present remotely for the application.

B. Leavitt offered the following in support of his application for variance:

- He purchased 103 Plaistow Road after having a dealership at 78 Plaistow Road for a number of year
- When he bought the property, there was an existing apartment in the building with the dealership
- The apartment is 1,200SF and consists of five (5) rooms, with two (2) bedrooms
- Mr. Leavitt intends to live in the unit with his wife to provide security for the property
- The apartment will not be rented
- The apartment if existing and he is not looking to building to it or change anything about it

J. Unger asked if the unit was up to code.

B. Leavitt offered that everything was existing but needed a cleaning and a coat of paint. He explained that he does have video cameras, but would like to be living on the lot. He added the previous owner had the driveways blocked off, but he has them opened to give police and fire easier access if needed. B. Leavitt noted that he supports many sports teams in the Town and would like to become a resident and get more involved. He added that it would also be a benefit to his neighbors to have someone living on the property.

It was asked if there would be a problem with making it a condition of any possible approval that the apartment could only be owner-occupied. B. Leavitt replied that it would not be an issue.

B. Leavitt offered the following in support of the variance criteria:

- Granting the variance would not be Contrary to the Public Interest because it's only a 1,200SF apartment and there are already other mixed uses in the C-1 district
- The Spirit and Intent of the Ordinance is Preserved because the intent is to maximize the commercial development along Route 125. This parcel is maximized, in fact it has been substantially improved over the last two (2) years
- There is Substantial Justice in granting the variance because it will allow the property owner to live on the premises, ensuring the security of the property and

- inventory. The intention is to curtail any vandalism or theft and will not have a negative impact on the neighbors. In these unprecedented time, security is a concern
- The Values of Surrounding Properties will not be Diminished because the increase of people coming and going during off business hours will indirectly result in more security for all the abutters
 - Literal Enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because having a residential unit on this site will have no negative effect on my neighbors and will help to ensure security. Granting the variance will be a benefit to all. The costs of additional security to maintain the property, and to not be able to use the existing unit would be a hardship.

It was noted that the answers are the same for the criteria for the second variance request.

P. Bealo asked about the issue of safety regarding the flammable substances that would be used in the repair area of the business.

B. Leavitt replied that he had increased the accessibility of the lot for the fire department.

P. Bealo offered that he had worked at a business that had chemicals that were explosive and/or flammable and they had a three- hour fire wall.

B. Leavitt explained that the waste oil that they would have has a very high flashpoint, they have no underground storage tanks on the property and they use natural gas for heating. He noted that egress for the unit is on the south side of the property and the unit is accessible without going through the business part of the building.

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. It was verified that there was no one on the remote access with their “hand raised” and the public hearing was closed.

DELIBERATIONS:

★ G. Ingham moved, second by J. Unger, to grant the application for a variance from Article V, §220-32B to allow a residential apartment use in the Commercial 1 district for the property located at 103 Plaistow Road with the following conditions:

- ***The applicant must file for Planning Board approval of an amended site plan within 90 days of a Notice of Decision from the Board.***

P. Bealo offered that he saw this as a different situation than the previous application for 93 Plaistow Road. This unit is already in place and is not located on the same lot as a gas station.

The Board considered the criteria for the granting of a variance with the following findings regarding #20-26:

- Granting the variance will not be Contrary to the Public Interest because the unit is existing and it is small in size
- The Spirit and Intent of the Ordinance is Preserved because the unit is already existing will not impact the operations of the business
- There is Substantial Justice in granting the variance because nothing will be changed about the lot, or the infrastructure, the unit is already existing. The addition of a couple of cars on the lot will not even be noticeable
- There will not be a Decrease in Surrounding Property Values as there will not be any changes to the site
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because the unit is pre-existing this owner and the owner would like to live there to provide security for his business

There was discussion about the variance going with the property on a permanent basis and the concern over the unit becoming a rental in the future. There was discussion about adding a condition that the unit could only be owner, or immediate family, occupied.

★ P. Bealo moved, second by J. Gifford, to amend the motion by adding a condition:

- *The residential apartment shall be occupied only by the owner, or the owner's immediate family members.*

Roll Call Vote: J. Gifford – yes; G. Ingham – yes; J. Unger – yes; P. Bealo – yes; D. Lloyd – yes. The vote was 5-0-0 U/A and the motion is amended.

There was no additional discussion on the amended motion.

Roll Call Vote on the Amended Motion: G. Ingham – yes; J. Unger – yes; P. Bealo – yes; D. Lloyd – yes; J. Gifford – Yes. The vote was 5-0-0 U/A and the amended motion passed.

★ J. Unger moved to grant the application for a variance from Article III, §220-16D to allow a non-motor vehicle related use, namely a residential apartment, on a site approved for motor vehicle sales, for the property located at 103 Plaistow Road with the following conditions:

- *The applicant must file for Planning Board approval of an amended site plan within 90 days of a Notice of Decision from the Board.*
- *The residential apartment shall be occupied only by the owner, or the owner's immediate family members.*

The Board reviewed the criteria for the granting of a variance with the following findings with regard to #20-27:

- Granting of the variance will not be Contrary to the Public Interest because the unit is pre-existing
- The Spirit and Intent of the Ordinance are Preserved the apartment is what was originally a house on the property
- There is Substantial Justice in Granting the variance as there is no gain to the public in a denial, so the only loss would be to the applicant
- Values of Surrounding Properties will not be Diminished because there will not be any changes to the site
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because the owner would have to find alternate means for security and there is no negative impact with the owner living on site.

Roll Call Vote: J. Unger – yes; P. Bealo – yes; D. Lloyd – yes; J. Gifford – yes; G. Ingham – yes. The vote was 5-0-0 U/A and the motion passed.

Request for Re-Hearing (Deliberations Only)

#20-17: A request from Richard & Sanaz Anthony for an administrative appeal of the June 17, 2020 Planning Board decision on Application 19-06, Milton Real Properties of Massachusetts, LLC. Relating to Article II, Section 220-2, Article V, Section 220-28, Tables 220-32A and 220-32B. The subject properties for Planning Board matter 19-06 are 143 Plaistow Rd, Tax Map 30, Lot 73 and 145A Plaistow Rd, Tax Map 30, Lot 72 in the Commercial 1 District. Milton Real Properties of Massachusetts, LLC.

DELIBERATIONS:

P. Bealo asked for confirmation from all members that they had received and read the request for re-hearing that was submitted by Attorney Scott Hogan on behalf of Richard and Sanaz Anthony. All confirmed that they had.

P. Bealo offered that Attorney Hogan's letter did not address the two (2) reasons that the Board did not accept jurisdiction over the application for appeal of the Planning Board's decision. He noted that the Planning Board were not the ones who made the zoning determination about the use of the property, the Zoning Officer did, in February 2019. The Planning Board relied on the determination in moving forward with their review. There was never a timely appeal filed of the Zoning Officer's determination.

P. Bealo added that the second reason that the Board did not accept jurisdiction was that the applicant failed to file notice with the Planning Board, the "officer" who's decision they were appealing, which is contrary to the RSAs. Yes, as stated in Attorney Hogan's letter, it was the responsibility of the Planning Board to provide a record for the appeal, but they have to be served to know that they need to provide such a record.

★ G. Ingham moved, second by J. Gifford, to deny the request for re-hearing in the matter #20-17 in that there is no evidence presented in the request for re-hearing that

supports a procedural error on the part of the Board, or provides additional information that would have potentially changed the Board's decision in this matter.

Discussion:

- The Board affirmed that they do not have jurisdiction over this matter, therefore a public hearing was not opened. The Planning Board did not make a zoning determination of the retail use of the property, they relied upon the written zoning determination of the Zoning Officer that was made in February 2019. No appeal was made at that time of his decision and the current appeal is untimely towards that determination.*
- The Board further affirms that the applicant did not make appropriate service to the Planning Board as the in accordance with 676:5 “by filing with the officer (Planning Board) from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof.”*

Roll call vote: P. Bealo – yes; D. Lloyd – yes; J. Gifford – yes; G. Ingham – yes; J. Unger – yes. The vote was 5-0-0 U/A and the request for re-hearing is denied.

There was no additional business before the Board and the meeting was adjourned at 8:04 PM

Respectfully Submitted:

Dee Voss
Administrative Assistant