



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

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**  
**December 3, 2020**

The meeting was called to order at 6:30 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](http://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 - *attending remotely, no others present*  
Jonathan Gifford - *excused*  
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*

**★ J. Unger was appointed as a voting member for the meeting. There were 5 voting members present.**

#### **Reorganization – Election of Officers**

**★ G. Ingham moved, second by J. Blinn, to reappoint the current slate of officers (P. Bealo-Chair, D. Lloyd-Vice Chair) for another one-year term. There were no additional nominations. Roll Call Vote: P. Bealo – abstained; D. Lloyd – abstained; J. Blinn – yes; G. Ingham – yes; J. Unger – yes. The vote was 3-0-2 and the motion passed.**

#### **Review and Approval of Minutes from October 29, 2020 Meeting**

**★ D. Lloyd moved, second by G. Ingham to approve the minutes of the September 24, 2020 meeting. There was no discussion on the motion. Roll Call Vote: D. Lloyd – yes; J. Blinn – yes; G. Ingham – yes; J. Unger – yes; P. Bealo – yes. The vote was 5-0-0 UA.**

#### **PUBLIC HEARINGS:**

***Request for extension of two-year deadline to exercise, or lose, variance approval***

**#18-01: A request from Jason Settineri for a variance from Article V, §220-32I to permit a 30' x 50' equipment storage structure to be constructed 22.9' from the rear property line, where 50' is the minimum allowed setback. The property is located at 73 Newton Road, Tax Map 68, Lot 12 in the ICR district. Casset Holdings, LLC is the property owner of record.**

**#18-02: A request from Jason Settineri for a variance from Article V, §220-32I to permit a 30' x 50' equipment storage structure to be constructed 47' 4" from the front property line, where 50' is the minimum allowed setback. The property is located at 73 Newton Road, Tax Map 68, Lot 12 in the ICR district. Casset Holdings, LLC is the property owner of record.**

A letter from Jason Settineri, requesting an extension of the deadline to exercise his 2018 variances was read into the record. It was noted that the RSAs require a variance to be exercised within two (2) years or it becomes void. The letter noted economic struggles as well as the COVID-19 pandemic as reasons that the structure that called for the two (2) variances had not yet been built.

D. Lloyd offered that all numbers in 2020 have been off and that he sympathized with their need to hold off on construction.

J. Blinn added that it has been a tough year for many businesses.

**★ P. Bealo moved, second by G. Ingham, to grant the request for a two (2) year extension of the deadline to exercise the granted variances in ZBA Matters #18-01 and #18-02. With the following condition(s):**

- *The new expiration date shall be March 29, 2022, two (2) years from the original approval*
- *No further extensions of the deadline will be granted*

***There was no discussion on the motion. Roll Call Vote: J. Blinn – yes; G. Ingham – yes; J. Unger – yes; P. Bealo – yes; D. Lloyd – yes; The vote was 5-0-0 U/A.***

**#20-31: A request from J & R Realty Trust, Jeffrey Raymond, TR for a variance from Article V, §220-32B to permit a contractor's storage yard with conditions of no outside storage of materials visible and no outside storage of heavy vehicles, including bulldozers, frontend loaders and backhoes. The property is located at 190 Plaistow Road, Tax Map 44, Lot 2 in the C1 District. The applicant is the property owner of record.**

Charlie Zilch, SEC & Associates; Peter Nicosia, Esq., Nicosia and Associates; Jeff Raymond, Property Owner; and Peter Blanchette, Town of Plaistow, Code Enforcement Official were all present by remote access for the meeting.

C. Zilch offered the following information regarding the site:

- It is currently a residential site located in the Commercial 1 (C1) District
- The single-family dwelling on the property is vacant and in poor condition
- The site has access from both Plaistow Road (Route 125) as well at Old County Road
- The site is 1.18 Acres, which is from a previous merger of two (2) lots
- There is 271 feet of frontage on Route 125 and 100 feet of frontage on Old County Road
- The intent is to use the footprint of the single-family for a two-story, 1,120SF office building and showroom
- A second building 1½ story, 3400SF warehouse structure is also proposed
- The property is currently serviced by on-site well and septic

- This location is proposed to be the business’ main base of operations
- The warehouse is proposed for the indoor storage of materials; there is no outside storage of materials proposed
- There is enough parking proposed to support their business vehicles as well as fourteen (14) employee spaces.
- Company vehicles consist of service vehicles, trailers, man lifts and lulls
- There not be any bulldozers, front-end loaders, or the like
- Two-way access is proposed on both Plaistow Road and Old County Road
- Loading areas are marked on the Plan
- The site will be appropriately buffered to the residential properties on Old County Road with lighter landscaping to the commercial properties
- The site will not be at capacity
- A drainage plan has been developed to go with the Planning Board application
- The site works well for the business use and provides Route 125 exposure for the office and showroom

P. Nicosia noted a three-page letter in support of their arguments that was part of the application packet. He explained that when they started the site planning process, they had requested a zoning determination from the Code Enforcement Official; that came back as the use was a contractor’s yard and as such was not a permitted use in the Commercial I (C1) district and necessitated the variance.

P Nicosia offered his client was hopeful that with some voluntary conditions the Board could accept the argument for the variance request.

P. Nicosia suggested that his client’s business was more comparable to a “trade business” than a contractor’s yard as defined in the Plaistow Zoning Ordinances (PZO). He offered that the application would voluntarily stipulate that there would be no outside storage of heavy equipment or materials. He noted that the business vehicles consisted of mostly pick-up trucks, vans, box trucks and trailers, which are more analogous with those businesses called out in the trade business definition. He added that ladders, boom lifts and inventory could be stored in the proposed warehouse and any exterior storage would make use of storage pods.

P. Nicosia noted the followed for the Board:

- The retail and showroom uses are allowed by right in the district
- The office use is also allowed by right in the district
- The voluntary conditions would align the proposed use more with a trade business than a contractor’s yard
- The development of the site would mean that the distressed residential structure, currently located on the parcel, would be removed and a conforming building, and a landscaped business would take its place
- The improved property would mean an increase of the taxes to be paid to the Town
- A new business could have a downstream economic impact in the area

- A new business in this location would have a positive impact on surrounding property values
- There would be new employment opportunities
- The current business located in Haverhill, MA would be relocated to this parcel to become their flagship location

P. Nicosia offered the following in support of the meeting the criteria for the granting of a variance:

- The Public Interest was previously addressed noting the increase in property taxes, positive downstream economic impacts, and increased employment opportunities
- With the voluntary conditions as part of any variance the application will meet the Spirit and Intent of the Ordinance
- There is Substantial Justice in allowing the property owner to develop the property to suit his business use
- There would not be any adverse impact to the surrounding Property Values as this would be a use that would fit well in this location and would be a new site
- There is a Hardship to the owner because they would effectively be trying to “force a square peg into a round hole” where the business fit more into the trade business definition than contractor’s yard. He offered that it was a tolerable variance to the definition

The Board asked P. Blanchette if he had comment.

P. Blanchette offered that the applicant’s attorney made a good argument that the business is closely related to a trade business, but it was his job to enforce the zoning and he made what he felt was the best call.

P. Bealo offered that it was all well to offer voluntary condition to gain a variance approval, that puts an enforcement burden back on the Town. He noted that it was difficult to rely on voluntary compliance when there are already violations at the application current location (213 Main St) as well as the subject site.

J. Unger noted the setback lines designated on the plan and questions the location of the current residential dwelling in the setback.

C. Zilch offered that they are allowed to rely on the footprint of the existing structure, even though it is non-conforming. He added that he had verified that with the Building Inspector.

J. Blinn noted the designated area for commercial vehicles and trailers. He noted that there are booms and bucket trucks on the current site and asked if they would be on this site.

P. Nicosia offered that there would be small boom lifts, but no heavy equipment. There would not be any bulldozers, backhoes or any of the equipment specifically called out in the contractor's yard. He added that some trade businesses have these to be used for snow removal.

J. Blinn questioned how the booms would be stored, noting that they could be seen at the other location in town.

P. Nicosia offered that there could be a condition that the booms are not extended when stored for visual purposes. He added that it would "kill two birds with one stone" as they would cure the concerns with the other site.

C. Zilch added that the parking for that equipment was located behind the proposed warehouse, the parking in the front was for customers and employees.

There was discussion about the equipment proposed to be stored at this location. It was noted that there have been complaints and unresolved violations at the current location of 213 Main Street. It was noted that it may be a safety purposes that lulls are stored in the extended position and 10-12 lulls extended to be seen above a fence was unsightly.

P. Nicosia offered that they were not intending to make 190 Plaistow Road look like 213 Main Street. This was intended to be a flagship location for them, and they were looking to be a good business neighbor.

P. Bealo noted that since there are the existing long-term, unresolved issues with the existing site and violations at the current site, it was more of a trust issue.

G. Ingham noted that some of the violations went back as far as April of 2108 and there were eight (8) final notices of violation without compliance. He echoed that it was a trust issue that the problem would not just be relocated to Route 125.

P. Nicosia offered that he was not personally aware of the violations. He suggested that placing conditions on any approval would allow the Building Inspector more "teeth" from an enforcement perspective. He reiterated that there would not be any exterior visible storage, no heavy equipment, no extension of the booms there would be appropriate screening and commercial vehicles would be parked to the back. He added that he would like to work cooperatively with the Board so that this could be a win-win and they were open to consideration of reasonable conditions the Board may deem necessary. P. Nicosia offered that the didn't want to predict failure.

There was discussion about exterior storage and screening. It was noted that there would be fencing and that pods could be used to contain exterior storage so that things are less visible. It was noted that there are storage containers at the Main Street location, but that there is all kinds of "stuff" all over the site. Frustration was expressed that there was little effort for compliance at the exiting site as noted by the multiple unanswered letters. It was reiterated that it was a matter of trust.

P. Nicosia offered that his client had no appetite to spend a lot of money to develop the site and then have it not look nice. He added that allowing this site to be developed would likely cure the issues with the existing site.

P. Bealo noted that enforcement was an expense to the Town and that more conditions did not ensure compliance. He questioned if there was a way to condition that the property owner would automatically be responsible for any court costs the Town might incur enforcing any site violations. He asked D. Voss to check with counsel on the possibility.

P. Nicosia offered that he would like the opportunity to get up to speed on the status of the violations at both the current site and the subject site. He noted that he would like to be able to address them to the Board so that they can have a level of comfort with the variance request.

P. Nicosia requested that the two (2) public hearings be continued in order to give him the opportunity to consult with his client regarding the violations on the current and proposed locations and well as to compose a list of reasonable approval conditions to recommend to the Board.

**#20-32: A request from J & R Realty Trust, Jeffrey Raymond, TR for an Appeal of the Administrative Decision of the Building Inspector which determined the applicant's use to be a contractor's storage yard, which is not a permitted use in C1 District. The property is located at 190 Plaistow Road, Tax Map 44, Lot 2 in the C1 District. The applicant is the property owner of record.**

P. Bealo stated that both 20-31 and 20-32 will be continued to January 7, 2021 at 6:30 p.m.

Other Business – Anthony vs. Plaistow Zoning Board of Adjustment.

D. Voss noted that the Anthonys, who had previously filed an appeal of the administrative decision of the Planning Board, however the Board did not accept jurisdiction over, had now filed an appeal of this Board's decision to the Rockingham Superior Court. The Board needed to decide who they would like to represent them in Court.

There was discussion that it made sense for Attorney Charles Cleary to represent them, as he was already up-to-speed, as he represents the Planning Board in the underlying matter.

**★ P. Bealo moved, second by D. Lloyd, to request that Attorney Charles Cleary represent the Zoning Board of Adjustment in the matter of Anthony vs. Plaistow ZBA which has been filed in Rockingham County Superior Court. There was no discussion on the motion. Roll Call Vote: G. Ingham – yes; J. Unger – yes; P. Bealo; D. Lloyd – yes; J. Blinn – yes. The vote was 5-0-0 UA.**

Other Business – ZBA By-Laws Review

It was noted for the Board that they had a copy of the Board's By-Laws in their packets. They were asked to review the document and be prepared to discuss any areas they feel should be amended.

There was no additional business before the Board and the meeting was adjourned at 7:44 PM

Respectfully Submitted:

Dee Voss  
Administrative Assistant