



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 7, 2021

The meeting was called to order at 6:32 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 - *attending remotely, no others present*
Jonathan Gifford - *excused*
Gary Ingham - *attending remotely, no others present*
Jim Unger, *Alternate - attending remotely, no others present (voting)*
Barb Burri, *Alternate – attending remotely, no others present (non-voting)*

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.

Review and Approval of Minutes from December 3, 2020 Meeting

★ D. Lloyd moved, second by J. Blinn to approve the minutes of the December 3, 2020 meeting. There was no discussion on the motion. Roll Call Vote: P. Bealo – yes; D. Lloyd – yes; J. Blinn – yes; G. Ingham – yes; J. Unger – yes. The vote was 5-0-0 UA.

PUBLIC HEARINGS:

Continued from December 3, 2020

#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.

Note: All the same Board members who were present for the December 3, 2020 meeting on this application were the same members hearing the application at this meeting.

Charlie Zilch, SEC & Associates and Peter Nicosia, Esq., Nicosia and Associates; were present by remote access for the meeting.

P. Nicosia reminded the Board that he had already gone through their responses to the variance criteria and the request to continue was to allow him time to discuss violations that had been brought up, specifically about the ones for the applicant's current location at 213 Main St. He offered the following additional information for the Board:

- There would be a brand new building at 190 Plaistow Road
- With the proposed conditions, the business fit into the definition of a trade business, which is permitted in the Commercial 1 district
- Any exterior storage would be within containers that would have to be permitted by the Planning Board
- There will be no heavy equipment storage on the 190 Plaistow Road parcel
- A letter with additional information had been sent to the Board as of this date

P. Nicosia offered that 190 Main Street is not the same as 213 Main Street, it will be new development. The intent was to move the Haverhill business to this location to be the company flagship store. He offered that the violations at 213 Main Street are not legally relevant to the development of 190 Plaistow Road.

P. Nicosia noted the history of the notices of violation that were spread over a short period of 16-18 months out of the six (6) years Mr. Raymond has owned the property. He added that there had not been any new violations since May of 2019, which he suggested demonstrated the owner's compliance. Mr. Nicosia offered that Plaistow Zoning Ordinance (PZO) §220-17.2 gave the Code Enforcement Officer the means to have commercial property owners clean up their properties, and that ordinance would still be applicable at the proposed location. He noted that this would apply to such non-compliance issues such as trash, debris, and overflowing dumpsters, which were the issues noted in the majority of the notices of violation at 213 Main Street.

P. Nicosia explained that he had provided the Board with pictures of the current conditions at 213 Main Street. He noted that some of the items on the site that could be considered as trash or debris were actually inventory and stock, which would be stored in the warehouse or in containers at the proposed site. He added that when Mr. Raymond took over the property from the previous owner, he remedied a drainage problem that the site was having. He noted the installation of a fence since the purchase of the property in an effort to give the location more curb appeal.

P. Nicosia offered that the proposed location at 190 Plaistow Road would have a state-of-the-art building and would be the company's flagship location. He added that there was a lot of money at stake and they wanted the site to be as attractive as possible. Mr. Nicosia noted that there might be an occasional pallet of materials or staging temporarily visible onsite if supplies had just been delivered and had not yet been put into a storage container.

P. Nicosia noted that 213 Main Street should not be determinative of 190 Plaistow Road, suggesting that the building of 190 Plaistow could potentially mollify some of the issues at 213 Main Street, even though there are no plans to close that location. He suggested that 213 Main Street should not be a "no vote" on 190 Plaistow Road and that the Town would be "cutting off their nose to spite their face." He reiterated that they did not want to have a bad site anymore than the Town wanted a bad site. Mr. Nicosia reminded that the new site would provide new services, new employment opportunities and new tax revenue for the Town and that they were amenable to reasonable conditions being placed

on any approval the Board would consider. He added that they wanted to be a good neighbor.

P. Nicosia offered that the site plan for 213 Main Street was issued to the previous owner, REP Landscaping, and not his client.

P. Bealo noted that the site plan would travel with the change in ownership and his client was bound by it.

C. Zilch offered that 213 Main Street was half the size of the lot at 190 Plaistow Road, which was also shaped better for his client's use. He added that the 2,200SF, two-story office building and 3,400SF warehouse building at 190 Plaistow Road would also provide the ability to maintain the site better than the 1,600SF of the site at 213 Main Street. C. Zilch explained that the site would also have landscaping buffers and more curb appeal than the site at 213 Main Street.

P. Bealo noted that he had heard several times between this hearing and the last that the applicant was not seeking to move 213 Main Street to 190 Plaistow Road, but was proposing to relocate the Haverhill facility to Plaistow. He explained that he had occasion to drive by the Haverhill site and it presented much the same as the 213 Main Street site in Plaistow. He added that it was a level of trust that the issues would not follow. P. Bealo offered that there were still compliance issues with the subject location, noting that there had been a permit issued for one (1) storage trailer, yet there were two (2) on the site, along with an un-permitted sign and a po-up camper. He reminded that an email from Building Inspector Peter Blanchette had offered that they had refrained from enforcement action because of the pending applications before the Board.

P. Nicosia explained that there was a reason why they were moving out of Haverhill, the building and site were dilapidated, the area was depressed, and they were trying to improve, not replicate what is there. He offered that the Haverhill site should not be outcome determinative of what 190 Plaistow Road would look like. He added that he was not aware of any violations at 190 Plaistow Road.

D. Lloyd asked how long the business had been in Haverhill.

P. Nicosia replied that he did not know, adding that he did not want a failure prediction for 190 Plaistow Road, noting that there had been a substantial financial investment.

J. Unger offered that he had looked closely at the site plan and it looked to be a nice site as proposed.

J. Blinn noted that he did not want to see something like what was at either of the current locations located on Plaistow Road. He added that they do not stay on top of things at either site, fences are not high enough to block everything, and he did not want anything to be seen from the road or an abutting house.

P. Nicosia replied that his client had addressed all previous violations at the site and did not know of any current violations. He reiterated that 190 Plaistow Road was not 213 Main Street. He also reiterated that they have voluntarily offered that there would not be visible outside storage of materials or heavy equipment at the proposed site.

D. Lloyd questioned if a lull was considered as contractor's equipment.

P. Nicosia replied that it was not specifically called out in the definition of a contractor's yard, and many of the trade businesses use them.

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 noted that there were no "raised hands" in the remote access and no emails had been received. It was also noted that there was no one on the remote access list other than P. Nicosia and C. Zilch.

P. Nicosia suggested the fact that there was no public opposition was a positive factor. He also noted that there were no negative comments from any department's either. Mr. Nicosia offered that there needed to be vision and foresight that the new location just might be the cure for the expressed issues. He reminded that his client had invested a lot of money in the project thus far and deserved the opportunity to develop the site.

C. Zilch added that early on in the process, Mr. Raymond had expressed to him that this was to be their flagship location. He offered that he had asked Mr. Raymond how many containers he wanted to request on the site plan, and the response was two (2) but only as a "just in case" because he wanted everything out of sight and for the property to look nice.

There was no additional input to the Board and the public hearing was closed.

DELIBERATIONS:

★ G. Ingham moved, second by J. Unger, to grant the application for a variance from Article V, §220-32.B to allow a contractor's yard at 190 Plaistow Road, Tax Map 44, Lot 2 in the C1 District, with the following condition(s):

- Storage of man-lifts and lulls shall be in the down position***
- No visible outside storage will be permitted***
- No heavy equipment, such as backhoes or frontend loaders, shall be stored on the site***

Discussion:

J. Blinn offered that this was a contractor's yard, which is not a permitted use.

G. Ingham offered that he was disappointed that all the talking was done through the lawyer and they did not get to hear from the property owner. He reminded that the reason the attorney asked for the initial continuance was because Mr. Raymond had not been forthcoming with him about the violations.

P. Bealo responded that they could not draw any conclusions from the matter being handled by the attorney.

G. Ingham offered that for him it was a matter of trust, added that past performance is often indicative of future behavior.

P. Bealo suggested that it was not even future behavior, but present, noting the violations at the current site.

D. Lloyd noted that 213 Main Street did not look like the pictures the attorney submitted when he checked the site three (3) weeks earlier.

P. Bealo expressed concern that allowing such a non-permitted use as a contractor's yard in the commercial district may discourage other permitted uses from locating in the district. He offered that this would be contrary to the Public Interest.

P. Bealo offered that the showroom and office use of this business is secondary to the contractor use, and not the primary use. He added that in his experience the marketing and sales was done at the homeowners' property and that this was more of an industrial use. The contractor's yard was not in keeping with the Spirit and Intent of the ordinance.

J. Unger replied that the site plan showed a well design site. He added that in his profession he knew of many roofing and siding contractors with offices and showrooms to display sample materials.

P. Bealo offered that he was on the fence with reference to Substantial Justice suggesting that the proposed use, with the conditions, was closer to being permitted than the current existing use.

P. Bealo expressed concern that allowed a non-permitted use, while it may offer a short-term betterment of the parcel's value, could have an adverse impact on the Surround Property Values by inhibiting true commercial businesses near-by.

P. Bealo offered that there were no unique conditions inherent in the parcel, which was of moderate size for a commercial site, that would prevent commercial development of the property. Therefore, he did not see a Hardship.

J. Unger noted that he could understand the business wanting to take advantage of the exposure and traffic counts of Route 125. He added that he could read this as more of a trade business with the stipulations in place.

G. Ingham reiterated his lack of trust that the site would remain compliant.

J. Unger reminded that if they were non-compliant the Town could always take an enforcement action.

P. Bealo offered that often times enforcement actions result in court costs.

J. Unger noted that the lot look nasty in its current state and this proposed use could be an improvement.

Roll call vote: D. Lloyd – yes; J. Blinn – no; G. Ingham – no; J. Unger – yes; P. Bealo - no. The vote was 2-3-0 and the motion was defeated.

The findings of the Board were that the application did not meet the variance criteria on these points:

- ***It would be contrary to the Public Interest to introduce an industrial business in the commercial district where it could discourage allowed commercial uses from locating in the area.***
- ***The commercial aspects of the proposed business are secondary to the primary use of the business, which are industrial in nature. This is contrary to the Spirit and Intent of the Ordinance, which is to locate commercial businesses in the commercial district and industrial businesses in the industrial district.***
- ***The locating of the business on the parcel may provide a short-term increase in property value of the subject parcel, over the current conditions of the property. However, the locating of a contractor's yard in the commercial district may deter permitted commercial uses from locating in the area, thus decreasing the marketability of properties and the Values of Surrounding Properties.***
- ***There is nothing unique about the parcel that would cause a hardship if not developed as a contractor's yard.***

Continued from December 3, 2020

#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.

Charlie Zilch, SEC & Associates and Peter Nicosia, Esq., Nicosia and Associates; were present by remote access for the meeting.

P. Nicosia offered that this was a straight challenge to the Zoning Officers decision to find this use to be a contractor's yard. He offered that the business should be found to be a trade business in that they would not have any materials or stock visibly stored outside, nor would they have any heavy equipment stored on the site. He offered that the information in his November 16, 2020 letter to the Board with the arguments for the

variance request are replicated in the request to appeal the administrative decision of the Peter Blanchette, Zoning Officer, which he called arbitrary and capricious.

P. Nicosia read aloud the definition of a trade business and a contractor's yard as found in Article II of the PZO. He reiterated that this business was more akin to a trade business.

P. Bealo offered that the applicant's website calls out that they do specific contracting work such as building decks.

P. Nicosia suggested that was just another form of physical alteration, an accessory to the primary dwelling.

D. Lloyd noted that they refer to themselves as contractors on their website.

P. Nicosia replied that electricians, plumbers, and the like are called contractors, suggesting the word contractor is a misnomer and that their proposed use is a trade business.

P. Bealo read a section from the Board of Adjustment Handbook for Members, produced annually by the New Hampshire Office of Strategic Initiatives, regarding the review of appeal of administrative decisions.

P. Nicosia suggested that it was within the Board's purview to look at the literal language of the PZO and apply it to what is being proposed, not what might be. He reminded that there will not be any outside storage of materials or heavy equipment, which were two of the keys in defining a contractor's yard.

C. Zilch offered that they were not conducting business in a manner typically associated with a contractor's yard, which he envisioned to be aggregate materials being stored in bins and large equipment such as dump trucks.

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 noted that there were no "raised hands" in the remote access and no emails had been received. It was also noted that there was no one on the remote access list other than P. Nicosia and C. Zilch.

There was no additional input, and the public hearing was closed.

DELIBERATIONS:

★ J. Unger moved, second by D. Lloyd to grant the Appeal of the Administrative Decision of the Code Enforcement Official that the application is for a contractor's yard, a non-permitted use, at 190 Plaistow Road, Tax Map 44, Lot 2 in the C1 District.

Discussion:

D. Lloyd noted that their current site has a lot of outside storage in use.

J. Unger offered that would they are now saying that would all be in the warehouse. He added that there was no warehouse on Main Street. Mr. Unger suggested that their operations would be that of a trade business.

D. Lloyd suggested that it would be a slippery slope to not call them a contractor's yard just because they voluntarily gave up some contractor yard activities.

There was discussion about the nuances in of the ordinance and how it did not define the businesses by activities. It was suggested that requesting the variance first, instead of appealing the Zoning Officer's determination, was an admission that they were a contractor's yard and needed variance relief. It was also suggested that the voluntary conditions were important in defining the business, though the ordinance is mute on whether that changes the category for a business. The lack of trust in the applicant's compliance was again noted to be an issue. It was noted that until recently there had been a bulldozer observed at the 190 Plaistow Road site.

There was no additional discussion on the motion.

Roll Call Vote: J. Blinn – no; G. Ingham – no; J. Unger - yes; P. Bealo – no; D. Lloyd – no. The vote was 1-4-0 and the motion is defeated.

Other Business – ZBA By-Laws Review

The following suggestions for changes to the ZBA By-Laws were made:

- **Page 1: OFFICERS:** Change the month that the Board elects the Chair and Vice Chair from September to March to be in line with the appointment dates of Board members

Discussion: None, this is a housekeeping suggestion

- **Page 1: MEETINGS:** Add language that allows the Board to meet remotely.

Remote access meetings shall allow be allowed as prescribe by NH RSA or any special order of the Governor's Office. The public shall have all the same rights to participate in a remote-access meeting as with an in-person meeting.

Discussion:

It was noted that if remote access meetings were allowed by Governor's Order then remote-access meetings would be allowed and this would not be necessary. It was noted that the change was suggested to be pro-active regarding anticipated Legislative changes.

This one should be tabled until there is such Legislative action and then any change to the By-Laws can be linked to the specific RSA.

- **Page 3 – APPLICATION/DECISION:** Change the time period for the filing of an appeal from twenty (20) days to thirty (30) days to be in line with the majority norm of other deadlines.

Discussion: None

- **Page 1: PERSONAL ELECTRONIC DEVICES AT MEETINGS:** Change to include language that would allow personal electronic devices as a means to access a meeting.

Discussion:

It was noted that remote access meetings make exclusive use of “personal electronic devices” such as cell phones, laptops, and computers.

- **Page 2: DISQUALIFICATION:** In the last sentences “The member disqualifying him/herself shall absent him/herself from the Board table during the public hearing and during the deliberations on the case” change the word “absent” to “remove”

Discussion:

While the words are synonymous, it was suggested that “remove” is more universally understood as to what is expected of the Board member.

- **Page 4: APPLICATIONS/DECISION:** Paragraph on Personal notice.

Discussion:

There was discussion regarding the meaning and intent of the section, which is that the applicant shall be properly notified of all actions regarding their application. No suggestions for change are needed.

The Board was asked to continue to review the By-Laws and to forward any additional suggestions for change to D. Voss to compile with these changes for the next meeting.

There was no additional business before the Board and the meeting was adjourned at 8:01 PM

Respectfully Submitted:

Dee Voss
Administrative Assistant