



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

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
February 25, 2021

The meeting was called to order at 6:30 pm

The following was read into the record:

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 – *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*

Review and Approval of Minutes from January 28, 2021 Meeting

★ D. Lloyd moved, second by G. Ingham to approve the minutes of the January 28, 2021 meeting. There was no discussion on the motion.

Roll Call Vote: P. Bealo – yes; D. Lloyd – yes; J. Blinn – abstain; J. Gifford – yes; G. Ingham – yes. The vote was 4-0-1 and the motion is passed.

P. Bealo went over the procedures for the meeting noting the following:

- Each matter will be heard in turn, the applicant will make their presentation, the Board will question and then the hearing will be opened to the public
- Once all testimony has been heard, and the public hearing closed there cannot be any additional input
- Each matter will be decided prior to the opening of a new public hearing for additional applications
- All motions will be made in the affirmative “to grant” format for clarity and consistency
- A written notice of decision will be available within five (5) business
- The Board reserves the right to continue any deliberations if they feel the need assistance of legal counsel
- No permits can be issued for thirty (30) days to allow for an appeal period per the RSAs

PUBLIC HEARINGS:

#21-02: A request from Federated Realty Five, LLC for a variance from Article V, §220-32I, to permit a structure to be located within 12’ of the property line (north side) where 35’ is the minimum required. The property is located at 49 Plaistow Road, Tax Map 26, Lot 67, in the C1 District. The applicant is the property owner of record.

#21-03: A request from Federated Realty Five, LLC for a variance from Article V, §220-32I, to permit a structure to be located within 21’ of the property line (Garden Rd side) where 35’ is the minimum required. The property is located at 49 Plaistow Road, Tax Map 26, Lot 67, in the C1 District. The applicant is the property owner of record.

D. Voss noted for the record that there had been an error in the legal noticing for this application. The notice shows that 35’ is the minimum required setback, which is not correct when the setback is from a roadway. A commercial setback from a roadway is 50’. Copies of email correspondence between D. Voss and the applicant’s agent, Charlie Zilch, were provided to the Board in their folders. C. Zilch acknowledged in the email that he had been informed to the
*Zoning Board of Adjustment
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notice error, did not find it to be fatal and would like to move the application forward. He further acknowledged that the notice error could not be used as grounds for requesting a re-hearing in the event the variance request is not granted.

Charlie Zilch, of SEC & Associates, was present remotely to represent the applicant. Also present remotely were Jonathan Rauch, property owner and Dave Sanderson, representing Convenient MD.

C. Zilch explained the application to the Board, noting the following:

- The parcel is 35,5000 SF (0.82A) with 213' frontage on Plaistow Rd (Route 125) and 242' on Garden Road
- Completely located within the Commercial 1 Zoning District
- The property's southern border is Little River, which makes the parcel subject to Shoreland Protection Regulations
- The minimum zoning building setbacks for the property are 50' from Route 125 and Garden Road, 35' to the northern border (Coin Shop property) and 75' from Little River
- Many commercial uses over time; auto loan company, Starbucks and in ice cream shop
- The commercial building is surrounding by a large, paved parking lot, with access from both Plaistow and Garden Roads
- The current building is 1800SF and is supported by on-site well and septic
- Convenient MD is an urgent care facility and would like to establish a location in Plaistow. They had previously tried to obtained variances to locate at 2 Main Street, but were denied
- This centrally located site, with access and exposure to Route 125 will suit their business needs
- There is adequate parking within the existing paved surface and the green space will remain
- The increase to the structure is proposed over existing impervious surface
- The proposed 5,150SF building is the prototypical footprint to support the services provided by Convenient MD including: 8 exam rooms, reception area, waiting room, supporting utility areas and restrooms for the anticipated patient volume
- The existing building would be razed and replaced with a 100' X 51.5' facility within the existing paved parking
- Buffers and fencing will be provided to meet the Planning Board's Site Plan Review Regulations
- The building will face Plaistow Road
- The setbacks from Plaistow Road and Little River can be met; the request for relief is from the left side setback (northern property line) and the rear setback (Garden Road)

J. Blinn asked about the elimination of the one the driveway access points from Route 125.

C. Zilch replied that the southern access, before the lights, was proposed to be closed.

J. Blinn noted that this property had always been used as a cut-through between Route 125 and Garden Road, which was dangerous. He asked if that would be eliminated.

C. Zilch responded that they did not want it to be used as a cut-through and it was hoped that eliminating the southern access and the reconfiguring of the property would limit the cutting

through. He added that it would be up to New Hampshire District 6 (D6) to make the final approval regarding curb cuts on Route 125.

J. Blinn asked if it would be a single-story building. It was confirmed to be a single-story building with an elevated façade.

There was additional discussion of the traffic cut-through issues that exist with the current site.

D. Lloyd questioned what the distance was from Garden Road to the closest point of the proposed building. It was noted to be 21' on the northwest corner and almost 50' to the southwest corner.

D. Lloyd asked if 5,150 SF was the standard for all Convenient MD buildings.

C. Zilch explained that he had asked his client if there was a way to make the building smaller, but it was offered that this is the footprint that supports their business.

P. Bealo questioned four (4) parking spaces that were parallel to the building and questioned if there could be six (6) spaces if they were perpendicular to the building. He noted that it wasn't really relevant to the application before the Board, but he was curious about the parking arrangement.

C. Zilch replied that there wasn't enough back up space to have them be perpendicular. To increase the back up space they would need to cut into the green space, which would require relief from the Planning Board.

C. Zilch provided the following responses to the criteria for the granting of a variance. He noted that the responses are applicable to both variance requests:

1. The proposed variance will not be contrary to the public interest because: By granting the variance, it will allow for the construction of an urgent care medical facility on a site that supports the proposed use in all other aspects relating to siting. The site will provide convenient vehicle access, emergency access from two entrances and adequate parking and maneuvering room. Excess pavement not necessary to support the use will be eliminated as well, lessening the total impervious area of the site. This will be a less intensive use of the site when compared to the drive in and take out food service businesses that existing previously. In all, the site will not have an adverse effect on the abutting properties or surrounding community.
2. The spirit and intent of the ordinance is preserved because: The intent of the ordinance is to provide adequate space and separation from uses and structures. In this particular case the building is to be sited within an existing paved surface that is located closer to the property lines than the proposed building. A buffer along Garden Road and the left property line can be established to maintain separation from the abutting uses and roadway thereby preserving the spirit and intent of the ordinance.
3. There is substantial justice in granting the variance because: There will be substantial justice in granting the variance by allowing the construction of the Urgent Care facility on this site. The building will be no closer to the left property line than the abutting commercial building and will provide an area in which an adequate buffer can be established. Additionally, in most instances the rear property line setback requirement is

35', but because we are abutting a second roadway the setback is 50'. As positioned the building will be 21' at its closest point and will almost meet the 50' setback at the opposite corner. Had there not been another roadway in this location a majority of the building would comply with a 35' setback. Although within this required 50' setback, the building will not obstruct or distract from vehicle traffic on Garden Road.

4. The values of surrounding properties will not be diminished because: The proposed use is permitted in the zone and as demonstrated, meets all other siting requirements necessary to properly support the building and its use. A fully designed site plan with a comprehensive drainage design will be submitted to the Planning Board for review and approval. All requirements of the Town's Site plan regulations will be applied to ensure there will be no adverse effect on the abutting properties and their owners. The building will be designed and maintained to the highest standard and will be in keeping with the types of businesses desired by the community. In all, there will be no diminution of surrounding property values.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: This site, though adequate in size, has a wetland from which a large setback is required as well as two frontage roadways that both require a large setback. As such, the building envelope is smaller than what the lot could truly support and unnecessarily limited. Strict adherence to the setback requirements limits potential uses that may require a larger building footprint but less supporting paved area such as this proposal. In this case both the larger setbacks from Plaistow Road and from the wetland complex surrounding Little River can be met. Relief is only necessary from the property lines noted. Denial would be an unnecessary hardship due to the uniqueness of the lot and the limited building envelope in relation to the lack of reasonable alternatives.

J. Gifford questioned where the septic was located.

C. Zilch replied that he believed it to be on the north side of the property, adding that a new system would have to be approved for the proposed use and he thought it would be located under the pavement.

C. Zilch offered that the site is currently paved to the property line on the north side (abutting 51 Plaistow Rd) and that some of the pavement would be removed for green space and fencing.

P. Bealo noted that while it wasn't a ZBA consideration, he was curious as to what the Fire Department might say about access around the site.

P. Bealo asked if the Board had any additional questions. There were none. He asked if there was anyone speaking in favor of the application. It was noted that there were no "hands raised" in the remote access, nor had any emails been received.

P. Bealo asked if there was anyone who just had a question or was opposed to the application.

Joseph Soucise, 19 Garden Road asked if the urgent care would be a 24/7 operation and what kind of noise might be generated.

D. Sanderson replied that the hours of operation would be 8:00AM to 8:00PM, seven (7) days a week.

J. Soucise asked if the designated main entrance would be from Route 125, it was confirmed that it would be.

P. Bealo inquired if they anticipated ambulance traffic, with those associated noises.

D. Sanderson responded that they didn't have ambulances that brought patients to the site. He added that there were times, one every few days, where a patient brought to the urgent care needed to go to a hospital, and an ambulance might be called on those occasions.

P. Bealo asked if there were any additional questions, or if the applicant had anything else to offer. There was no one and the public hearing was closed.

DELIBERATIONS:

★G. Ingham moved, second by J. Blinn to grant the request for a variance from Article V §220-32I to allow a structure to be built within 12' of the property line on the north side of the parcel located at 49 Plaistow Road, Tax Map 26, Lot 67.

P. Bealo offered that this parcel had internal physical limitations.

G. Ingham noted that after taking a close look at the plan he thought it would be a much better use than is what currently on the site. He added that he counted twenty-five (25) parking spaces and didn't feel that the proposed setbacks were a problem.

J. Blinn offered that he agreed it was a good use of the parcel, better than before.

The Board reviewed the variance criteria with the following findings:

- The variance is not contrary to the Public Interest because there is no increase to the paved area while providing a useful service to the community.
- The Spirit and Intent of the ordinance is preserved because there is no increase to the impervious areas and Little River will be protected.
- There is Substantial Justice in granting the variance in that there will not be any gain to the general public in the denial of the variance.
- This "cookie cutter" prototypical building will not adversely impact commercial Property Values. The anticipated lessening of through traffic will be a plus.
- The unique condition of the parcel, with nearly half of it unusable because of Little River and the wetlands, which strict enforcement of the ordinance would propose an unnecessary hardship. It was noted that this would probably max out the capacity of the site.

P. Bealo offered that the application meets the criteria for a variance.

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

★ G. Ingham moved, second by D. Lloyd to grant the request for a variance from Article V §220-32I to allow a structure to be built within 21' of the property line on the Garden Road side of the parcel located at 49 Plaistow Road, Tax Map 26, Lot 67.

It was noted that the findings will be similar for the second variance request as for the first request.

The Board reviewed the variance criteria with the following findings:

- Granting the variance will not be contrary to the Public Interest because this will not be the main access to the facility, that will be Route 125 where they are able to meet the 50' setback.
- The Spirit and Intent of the ordinance is preserved because there is still visibility and the applicant will be able to comply with buffering requirements.
- There is Substantial Justice in granting the variance in that there will not be any gain to the general public in the denial of the variance.
- There will not be an adverse impact to the surrounding property values as this is a higher use of the property. It is more likely to increase property values. It was also noted that decreasing the use as a cut through would help with traffic on some of the side roads like Garden Road and West Pine Street.
- The unique shape of the parcel and the location of Little River prohibits the use of 40%-50% of the property, creating a hardship.

P. Bealo offered that the application meets the criteria for a variance.

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

REQUEST FOR RE-HEARINGS – 190 PLAISTOW RD (DELIBERATIONS ONLY)

★ J. Gifford recused himself out of fairness to the applicant as he had not participated in either public hearing on this matter.

★ P. Bealo appointed J. Unger as a voting member to replace J. Gifford.

It was noted that J. Unger participated in and was a voting member for both December 2, 2020 and January 7, 2021 public hearings on these matters. P. Bealo noted that J. Unger voted in favor of both applications and having him sit for the re-hearing request was to be as fair as possible to the applicant.

D. Voss asked the members of the Board to certify for the record that they had read the submitted motion for re-hearing so that the six (6) page document did not have to be read into the record. A copy of the document is attached to these minutes.

The following members certified, by roll call and for the record, that they had read the submitted request for re-hearing:

★ P. Bealo – yes; D. Lloyd – yes; J. Blinn – yes; G. Ingham – yes; J. Unger – yes.

#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.

★ D. Lloyd moved, second by J. Unger to grant the request for a re-hearing of the use variance application for 190 Plaistow Road, ZBA Matter #20-31.

Discussion:

P. Bealo offered the Board should reject the assertions in the motion and noted specific responses to the following items in the motion for re-hearing:

Page 2, #3 – The Board improperly based both Decisions upon considerations relating to 213 Main Street, Plaistow, NH 03865 and 38-40 Lancaster Street, Haverhill, MA 01830 which are not the subject property of the Applications before the Board, not the same intended business uses in certain respects, nor even owned by the same Applicant.

- The only ZBA considerations of other properties used by the applicant for this contractor business were when applicant offered certain “concessions” the ZBA was concerned that multiple violations have never been addressed or even responded to at present Plaistow location and new location (190 Plaistow Rd) already had violation, so credibility was questioned.

Page 2-3, #5 - The Board improperly made an adverse finding that the Applicant's concurrent Appeal of the Building Inspector's Zoning Determination and companion Application for a Variance was a basis for denial or waiver of rights when in fact, the Applicant was required to request the concurrent alternative relief. Moreover, the order of the hearings did not matter as both Applications were filed concurrently and timely. "Ordinarily, parties must exhaust their administrative remedies before appealing to the courts." McNamara v. Hersh, 157 N.H. 72, 74 (2008).

- The applicant was not required to request concurrent relief. The appeal from administrative decision was required to be timely, within twenty (20) days, but not the variance request. And while the ZBA did question concurrent requests specifically stated no decision will be based on that occurrence. The applicant specifically requested that the variance request be placed on the agenda first, which the Board determined to be a tacit agreement that the use was a contractor's yard, which required the use variance.

Page 3, #6 - The Board drew adverse findings because the principal of the Applicant did not testify at the hearing but rather relied upon a New Hampshire Attorney and New Hampshire Civil Engineer.

- While one board member did mention the absence of the property owner, he also stated that he would not use that as a decision making criteria.

Page 3, #7 - The Board improperly categorized the Applicant's proposed business use as a Contractor's Storage Yard when it should have been categorized as a Trade Business. The following Plaistow Zoning Ordinance Definitions apply:

- The ZBA discussed this in detail and decided that this is a contractor's storage yard. Also, the applicant's website explicitly stated that they are contractors doing, roofing,

siding and deck construction. Again, asking for the variance to be first was seen as a concession of the use.

Page 3, #9 - *The Application stipulated that there would be no storage of man-lifts and lulls in the upward position, no visible outside storage of materials and no heavy equipment storage such as backhoes or frontend loaders. There was zero property specific evidence presented in the Administrative Record to rebut this assertion or to rebut the facts that clearly indicate Applicant's proposed business uses were a Trade Business and other uses allowed as a matter of right in the Zone.*

- The ZBA discussed this in detail and decided it is a Contractor's storage yard. Also, Applicant's website explicitly stated that they are contractors doing roofing, siding and deck construction. And existing unanswered violations caused ZBA to question the applicant's assertions of what would be stored there.

Page 4, #11 - *If the language used in a zoning ordinance may reasonably be construed to have some purpose and effect, it must be read in that light. Anderson v. Motorsports Holdings, LLC, 155 N.H. 491 (2007.) The Zoning Board of Adjustment must interpret the applicable zoning ordinance in order to determine the purpose. Because the traditional rules of statutory construction generally govern the review, the words and phrases of an ordinance should be construed according to the common and approved usage of the language. When the language of an ordinance is plain and unambiguous, the Zoning Board need not look beyond the ordinance itself for further indications of legislative intent. Schroeder v. Town of Windham, 158 N.H. 187 (2008.) The Board improperly formulated opinions of the Zoning Definitions that are inconsistent with their plain language.*

- ZBA discussed this in detail and decided it is a Contractor's storage yard. Also, Applicant's website explicitly stated that they are contractors doing roofing, siding and deck construction.

Page 4, #12 - *The Board's written Decision regarding Applicant's Administrative Appeal of the Building Inspector's Zoning Determination contains no findings whatsoever, let alone specific legal or factual findings as required by law.*

- The appeal of administrative order was discussed it at great length and the ZBA affirmed Building Inspector's order. The ZBA does not have to go further to justify Building Inspector's order.

Page 4, #13 - *The Motion to deny the Applicant's Administrative Appeal was not unanimous.*

- The fact that both decisions were not unanimous only shows the ZBA members considered all the evidence and voted as individuals. This should be applauded. No RSA requires or even suggests that a vote needs to be unanimous, only that three (3) votes to the affirmative are required to pass a motion to grant.

Page 4, #15 - *There was no opposition from any Plaistow Municipal Department regarding the Applicant's Administrative Appeal.*

- There was a written statement of opposition from the Building Inspector.

Page 4, #16 - *The Applicant met its burden of proof on its Variance Application that (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. RSA 674:33, I(b)(1)-(5); and, Perreault v. Town of New Hampton, 171 N.H. 183, 186, 193A.3d 266, 268-69 (2018.)*

- The Board rejects this statement, there was thoughtful discussion and the Board decided that the applicant did not meet their burden of proof.

Page 5, #18 - *There was zero evidence in the Administrative Record that allowing the Variance would be contrary to the public interest and discourage allowed commercial uses in the area and the finding made in the written decision is unsupported by a single fact in the Record. In fact, the record evidence demonstrated that allowance of this project would enhance commercial growth in the area. The Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road. The Board's finding was pure unsupported conjecture.*

Page 5, #19 - *There was zero evidence in the fact record that the primary use of the business was industrial in nature. The Administrative Record clearly indicated that the primary use of the business was retail, office and trade. As such, grant of the Variance would not be contrary to the spirit and intent of the ordinance. Again, the Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road. The Board's finding was pure unsupported conjecture.*

- As stated before: The ZBA considered the use in detail and determined use to be a contractor's yard which is not allowed in C-1 district, only in Industrial and ICR zones in Plaistow.

Page 5, #20 - *There was zero evidence in the fact record that the proposed development regarding the Variance Application would deter other commercial uses from locating in the area or decreasing market value of surrounding properties. The nature and character of the surrounding neighborhood supported the Variance Application grant. Again, the Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road. The Board's finding was pure unsupported conjecture.*

- The ZBA members are allowed to use their local knowledge and common sense, especially when applicant only offered unsubstantiated opinions and no evidence that use would enhance market values of nearby properties.

Page 5, #21 - *There was unique characteristics of the parcel that justified granting the Variance. The fact record demonstrated the current and past use of the property has been non-conforming residential which has become dilapidated. Applicant's proposed project brought the property closer to zoning conformity and was more consistent with the character of the neighborhood and the zoning/planning objectives in the town of Plaistow. The site plan set also demonstrated certain unique aspects of the premises dictating the proposed development specifics that owed or related to the property conditions and surrounding neighborhood. Again, the Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road.*

- The applicant failed to show unique characteristics of the parcel itself that would be a hardship.

Page 5, #22 - The Board's written Decision regarding Applicant's Variance Application contains insufficient findings required by law. The findings set forth are very general and do not tie to any specific fact evidence or submission or finding in the Administrative Hearing. The findings are general conclusions based upon pure conjecture.

Page 5, #23 - The Motion to deny the Variance Application was not unanimous.

- The ZBA's decisions are not required to be unanimous and the split vote actually shows the Board members acted properly.

Page 5, #24 - There was no opposition from the public regarding the Variance Application.

- Lack of public comment is not relevant to a ZBA decision

Page 6, #25 - There was no opposition from any Plaistow Municipal Department regarding the Applicant's Variance Application

- The Building Inspector is not required to oppose a Variance application, and in general does not oppose applications. It's not his job. It's the job of the applicant to provide proof as to how they meet the criteria and it's the job of the ZBA to decide if they indeed do meet the criteria. In this case, the Board decided that they did not.

G. Ingham offered that he did not see that they met the criteria for a re-hearing, adding that they just rehashed everything that had already been stated at the public hearing.

D. Lloyd read from the ZBA Member Handbook (New Hampshire OSI (Office of Strategic Initiatives)) what the criteria was for the granting of a re-hearing and offered that he didn't see that they met it. He reminded that he had been a "yes" vote for the original variance request. D. Lloyd added in preparing for this meeting he re-read the minutes and looked again at the proposed Plan, he believes even more strongly that they are a contractor's yard, and the Board made the correct decision in that assessment.

J. Blinn noted that he did not find any new evidence in the motion to re-hear these matters.

J. Unger also noted that he had voted yes to both original applications, but he could not see any new evidence or procedural error that would allow for a re-hearing.

Roll Call Vote: G. Ingham – no; J. Unger – no; P. Bealo – no ; D. Lloyd – no; J. Blinn - no. The vote was 0-5-0 and the motion was defeated.

#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.

★ D. Lloyd moved, second by J. Unger to grant the request for a re-hearing of the appeal of administrative decision of the Zoning Officer application for 190 Plaistow Road, ZBA Matter #20-32.

Discussion:

P. Bealo noted that everything he previously stated applies to the Administrative Appeal as well as the Variance. He offered that the Board ultimately voted to uphold the decision of the Building Inspector and it was a proper and lawful decision.

D. Lloyd added that it was the applicant's burden to prove that it was not, and he could not find any evidence in the motion to re-hearing that proved differently.

Roll Call Vote: J. Unger – no; P. Bealo - no ; D. Lloyd – no; J. Blinn - no; G. Ingham – no. The vote was 0-5-0 and the motion was defeated.

OTHER BUSINESS – MEMBER REAPPOINTMENT RECOMMENDATIONS:

D. Voss noted that there were three (3) members with appointments that will expired at the end of March. She asked for the Board for a vote to recommend that the Board of Selectmen (BOS) reappoint each member for another three (3) year terms.

★ J. Unger moved, second by G. Ingham that the ZBA recommend to the Board of Selectmen that current members Peter Bealo, Jonathan Gifford and John Blinn be reappointed as members of the Zoning Board of Adjustment, each for another three (3) year term.

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

It was noted that since P. Bealo was one of the members being recommended, that the letter to the BOS would go out under D. Lloyd's signature as the Vice Chair.

OTHER BUSINESS – DESIGNATION OF LEGAL COUNSEL

P. Bealo offered that since the Board had worked so well with Charles Cleary with the Anthony's appeal of the Planning Board's decision in the ProQuip matter, he was suggesting that Mr. Cleary be designated as ZBA counsel. He noted that it was no reflection on the current attorney, Sumner Kalman.

★ P. Bealo moved, second by D. Lloyd to request that Attorney Charles Cleary of Wadleigh, Starr and Peters, PLLC, be designated as Legal Counsel for the Zoning Board of Adjustment.

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

OTHER BUSINESS – BY-LAW AMENDMENTS:

The Board did a first reading of proposed amendments to their By-Laws. The proposed language is attached to these minutes. The second and final reading of the proposed amendments will be at the next

There was no additional business before the Board and the meeting was adjourned at 7:54 p.m.

Respectfully Submitted:

Dee Voss
Administrative Assistant

Attachments: Attorney Peter Nicosia Motion for Re-Hearing
Draft Amended ZBA By-Laws

LAW OFFICE OF
NICOSIA & ASSOCIATES, P.C.

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January 28, 2021

VIA OVERNIGHT MAIL AND EMAIL

Town of Plaistow
Zoning Board of Adjustment
145 Main Street
Plaistow, NH 03865

RE: Variance Application (#20-31)

Tax Map 44, Lot 2
J&R Realty Trust (Applicant)
Jeffrey E. Raymond, Trustee
190 Plaistow Road (Property)
Plaistow, NH 03865

and

RE: Administrative Appeal Application (#20-32)

Tax Map 44, Lot 2
J&R Realty Trust (Applicant)
Jeffrey E. Raymond, Trustee
190 Plaistow Road (Property)
Plaistow, NH 03865

Dear Mrs. Voss and Members of the Zoning Board:

MOTION FOR RE-HEARING
(R.S.A. 677:2)

Applicant

The "Applicant" is Jeffrey Raymond, Trustee of the J & R Realty Trust, 38-40 Lancaster Street, Haverhill, MA 01830

Property

The "property" is 190 Plaistow Road, Tax Map 44, Lot 2 in the C1 District.

Decisions Being Appealed and Requested to be Re-Heard

January 7, 2021 Decisions of the Zoning Board of Appeals (attached hereto and incorporated herein by reference:)

- January 7, 2021 Decision upholding 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; and,
- January 7, 2021 Decision Denying the Applicant's request for a Variance from Article V, s.220-32.B to allow a contractor's yard at 190 Plaistow Road, Tax Map 44, Lot 2 in the C1 District (hereinafter referred to as the "Decision.")

Standing

The Applicant is an aggrieved person within the meaning of RSA 677:2 because the Applicant has a direct and definite interest in the outcome of the Zoning Board of Adjustment Decision as outlined below. Applicant is also the current tax-paying property owner of the property.

Grounds for Re-Hearing Appeal

Pursuant to RSA 677:3, the Applicants assert the following grounds for Re-Hearing Appeal:

1. Applicant incorporates herein by reference all materials submitted to the Zoning Board on both the Administrative Appeal and Variance Applications.
2. In general, both Decisions were arbitrary, capricious, unreasonable and unlawful under RSA 677:3 and should be annulled.
3. The Board improperly based both Decisions upon considerations relating to 213 Main Street, Plaistow, NH 03865 and 38-40 Lancaster Street, Haverhill, MA 01830 which are not the subject property of the Applications before the Board, not the same intended business uses in certain respects, nor even owned by the same Applicant.
4. The Board improperly failed to base both Decisions upon considerations exclusively relating to the Applications and submittals specific to 190 Plaistow Road, Plaistow, NH 03865 as presented by this specific Applicant.
5. The Board improperly made an adverse finding that the Applicant's concurrent Appeal of the Building Inspector's Zoning Determination and companion Application for a Variance was a basis for denial or waiver of rights when in fact, the Applicant was required to request the concurrent alternative relief. Moreover,

the order of the hearings did not matter as both Applications were filed concurrently and timely. "Ordinarily, parties must exhaust their administrative remedies before appealing to the courts." McNamara v. Hersh, 157 N.H. 72, 74 (2008).

6. The Board drew adverse findings because the principal of the Applicant did not testify at the hearing but rather relied upon a New Hampshire Attorney and New Hampshire Civil Engineer.
7. The Board improperly categorized the Applicant's proposed business use as a Contractor's Storage Yard when it should have been categorized as a Trade Business. The following Plaistow Zoning Ordinance Definitions apply:

ARTICLE II-DEFINITIONS (220-2)

Trade Business

"A business enterprise which holds the necessary state and local licenses to provide trade services directly to the ultimate consumer. Such examples would be electricians, plumbers and HVAC contractors. This does not include businesses such as landscaping or construction contractors that typically call for outdoor storage of materials."

Contractor's Storage Yard

"A site upon which heavy vehicles and equipment (such as bulldozers, front-end loaders, and back-hoes) and materials, supplies and forms, used by professional contractors in construction, land clearing, site work, utilities, landscaping or other similar activities are stored, including waste disposal containers. Land upon which any of the above items are temporarily stored on-site during the course of an active construction project shall not be considered a contractor's storage yard."

8. In the present Application, the proposed Uses (and related stipulated limitations) should have been determined to be a Trade Business and other Uses Permitted as a matter of right in a CI Zone under 220-32(B) as opposed to a pure Contractor's Storage Yard for the reasons set forth below.
9. The Application stipulated that there would be no storage of man-lifts and lulls in the upward position, no visible outside storage of materials and no heavy equipment storage such as backhoes or frontend loaders. There was zero property specific evidence presented in the Administrative Record to rebut this assertion or to rebut the facts that clearly indicate Applicant's proposed business uses were a Trade Business and other uses allowed as a matter of right in the Zone.

10. Although Applicant's proposed uses include siding, roofing, windows and decks, all materials will be stored within the warehouse or containers. Vehicles on site will only be light vehicles and not the heavy vehicles identified in the Contractor's Storage Yard definition. The proposed project also provides office and retail showroom space both of which are permitted Uses in the CI Zone. The allowed Trade Business use focuses on trade services to be provided to a Plaistow consumer which is the case here. Trade Business owners also have light vehicles and light equipment. The Administrative Record was devoid of property specific evidence to rebut this assertion.
11. If the language used in a zoning ordinance may reasonably be construed to have some purpose and effect, it must be read in that light. Anderson v. Motorsports Holdings, LLC, 155 N.H. 491 (2007.) The Zoning Board of Adjustment must interpret the applicable zoning ordinance in order to determine the purpose. Because the traditional rules of statutory construction generally govern the review, the words and phrases of an ordinance should be construed according to the common and approved usage of the language. When the language of an ordinance is plain and unambiguous, the Zoning Board need not look beyond the ordinance itself for further indications of legislative intent. Schroeder v. Town of Windham, 158 N.H. 187 (2008.) The Board improperly formulated opinions of the Zoning Definitions that are inconsistent with their plain language.
12. The Board's written Decision regarding Applicant's Administrative Appeal of the Building Inspector's Zoning Determination contains no findings whatsoever, let alone specific legal or factual findings as required by law.
13. The Motion to deny the Applicant's Administrative Appeal was not unanimous.
14. There was no opposition from the public regarding the Applicant's Administrative Appeal.
15. There was no opposition from any Plaistow Municipal Department regarding the Applicant's Administrative Appeal.
16. The Applicant met its burden of proof on its Variance Application that (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. RSA 674:33, I(b)(1)-(5); and, Perreault v. Town of New Hampton, 171 N.H. 183, 186, 193 A.3d 266, 268-69 (2018.)
17. The Administrative Record demonstrates ample facts to justify the grant of the Variance, especially in light of the voluntary conditions offered which stipulated that there would be no storage of man-lifts and lulls in the upward position, no

visible outside storage of materials and no heavy equipment storage such as backhoes or frontend loaders.

18. There was zero evidence in the Administrative Record that allowing the Variance would be contrary to the public interest and discourage allowed commercial uses in the area and the finding made in the written decision is unsupported by a single fact in the Record. In fact, the record evidence demonstrated that allowance of this project would enhance commercial growth in the area. The Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road. The Board's finding was pure unsupported conjecture.
19. There was zero evidence in the fact record that the primary use of the business was industrial in nature. The Administrative Record clearly indicated that the primary use of the business was retail, office and trade. As such, grant of the Variance would not be contrary to the spirit and intent of the ordinance. Again, the Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road. The Board's finding was pure unsupported conjecture.
20. There was zero evidence in the fact record that the proposed development regarding the Variance Application would deter other commercial uses from locating in the area or decreasing market value of surrounding properties. The nature and character of the surrounding neighborhood supported the Variance Application grant. Again, the Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road. The Board's finding was pure unsupported conjecture.
21. There was unique characteristics of the parcel that justified granting the Variance. The fact record demonstrated the current and past use of the property has been non-conforming residential which has become dilapidated. Applicant's proposed project brought the property closer to zoning conformity and was more consistent with the character of the neighborhood and the zoning/planning objectives in the town of Plaistow. The site plan set also demonstrated certain unique aspects of the premises dictating the proposed development specifics that owed or related to the property conditions and surrounding neighborhood. Again, the Board improperly rendered its determination based upon 213 Main Street and not 190 Plaistow Road.
22. The Board's written Decision regarding Applicant's Variance Application contains insufficient findings required by law. The findings set forth are very general and do not tie to any specific fact evidence or submission or finding in the Administrative Hearing. The findings are general conclusions based upon pure conjecture.
23. The Motion to deny the Variance Application was not unanimous.
24. There was no opposition from the public regarding the Variance Application.

25. There was no opposition from any Plaistow Municipal Department regarding the Applicant's Variance Application.

Conclusion and Relief Sought

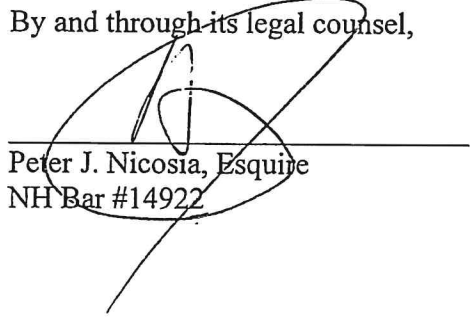
WHEREFORE, the Applicants for the Re-Hearing request that the Plaistow Zoning Board of Adjustment **reverse and annul** the following Decisions:

- January 7, 2021 Decision upholding 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; and,
- January 7, 2021 Decision Denying the Applicant's request for a Variance from Article V, s.220-32.B to allow a contractor's yard at 190 Plaistow Road, Tax Map 44, Lot 2 in the C1 District (hereinafter referred to as the "Decision.")

and to conduct a re-hearing to address the procedural and substantive deficiencies in the evidence, application, findings and decision.

RESPECTFULLY SUBMITTED,
Jeffrey Raymond, Trustee of the J & R Realty Trust

By and through its legal counsel,



Peter J. Nicosia, Esquire
NH Bar #14922

**Town of Plaistow ♦ Zoning Board of Adjustment
145 Main Street, Plaistow, NH 03865**

NOTICE OF DECISION

Applicant: J & R Realty Trust
Jeffery Raymond, Trustee
38-40 Lancaster Street
Haverhill, MA 01830

In the matter(s):

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.

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.

You are hereby notified of the decision of Plaistow Zoning Board of Adjustment with reference to the above noted application.

★ 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***

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:

- 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.*

★ 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.

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.

Date of Decision: January 7, 2021

Signature:



Zoning Board Administrative Assistant

NOTE: All motions before the Zoning Board of Adjustment must be passed by a minimum of three (3) votes.

NOTE: Application for rehearing on any questions of the above determination may be taken within 30 days of said determination by any party to the action or person affected thereby according to New Hampshire Revised Statutes Annotated, 1998, Chapter 677:2

NOTE: All Variances/Special Exceptions must be exercised within two (2) years of the ZBA decision or they shall be considered as abandoned and invalid. NHRSA Chapter 674:33 1-A and IV

cc: Peter Blanchette, CBO Department of Building Safety
John Cashell, Planning Director
Peter J. Nicosia, Esq., Nicosia & Associates P.C. (via email)
Charlie Zilch, SEC & Associates (via email)

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ZONING

220 Attachment 1

OF

Town of Plaistow

Zoning Board of Adjustment Bylaws

[Adopted as amended 5-25-2006, Amended 1-24-2019]

PROPOSED AMENDMENTS

Deletions appear in **~~Strikethrough Red~~**

Additions appear in ***Italic Red***

AUTHORITY:

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (***RSA***) 1983, Chapter 676:1, and the Zoning Ordinance and Map of the Town of Plaistow.

OFFICERS:

A Chair shall be elected annually by a majority vote of the Board in the month of **~~September~~ *April***. He/She shall preside over all meeting and hearing, appoint such committees as directed by the Board and shall affix their signature in the name of the Board.

A Vice-Chair shall be elected annually by a majority vote of the Board in the month of **~~September~~ *April***. The Vice-Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair.

All officers shall serve for one (1) year and shall be eligible for re-election.

Up to five (5) alternate members shall be appointed, as provided for the by the local legislative body, to serve whenever a regular member of the Board is unable to fulfill their responsibilities.

An Administrative Assistant shall be assigned to the Board by the Board of Selectmen or its designee. The Administrative Assistant shall be a paid employee of the Town of Plaistow and shall maintain a record of all meetings, transactions and decisions of the Board, and perform such other duties as the Board may direct by resolution. The Administrative Assistant has no vote on matters before the Board.

MEETINGS:

Regular meetings shall be held at the Town Hall at 6:30 p.m. A schedule of the meeting dates and application deadlines shall be published annually by December 1st for the next calendar year. Other meetings may be held on call of the Chair, provided public notice and notice to each

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member is given at least forty-eight (48) hours, excluding Sundays and legal holidays, prior to such meetings.

PERSONAL ELECTRONIC DEVICES AT MEETINGS

Use of electronic devices is subject to the Right-to-Know Laws as described in RSA 91-A. Therefore, use of any personal electronic devices during board meetings is prohibited.

Exceptions:

- The Recording Secretary may use an electronic device to record the meeting.
- *Use of personal electronic devices is permitted for remote meeting access*

All personal electronic devices will be placed in silent mode during board meetings.

In the event that a member needs to handle an emergency situation, they may excuse themselves from the table to do so.

QUORUM:

A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members. RSA 674:33 provides that "...the concurring vote of three (3) members of the Board shall be necessary to reverse any action of an administrative official or decide in favor of any appeal..." For this reason, the Board will make every effort to ensure that a full five-member Board is present for the consideration of any appeal.

If there is not a full five-member Board the applicant shall have the right to request a continuance to the next meeting. The date and time of the next meeting shall be announced and considered official notification to all interested parties of the continuance. No additional written notification will be sent.

If any regular Board member is absent from any meeting or hearing, or disqualifies him/herself from sitting on a particular case, the Chair shall designate one of the alternate members to sit in the place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while sitting.

DISQUALIFICATION:

If any member finds it necessary to disqualify him/herself from sitting in a particular case, as provided in RSA 673:14, he shall notify the Chair, or the Administrative Assistant, as soon as possible so that an alternate may be requested to sit in their place. The disqualification shall be announced by either the Chair or member disqualifying him/herself before the beginning of the public hearing on the case. The member disqualifying him/herself shall ~~absent~~ *remove* him/herself from the Board table during the public hearing and during the deliberations on the case.

CANCELED MEETINGS:

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In the event a meeting is canceled by lack of a quorum, severe weather conditions, or other event that is not the fault of the applicant, the costs of renotification of the public hearing shall be borne by the Board.

ORDER OF BUSINESS:

The order of business for regular meetings shall be as follows:

- Roll call by the Administrative Assistant.
- Minutes of the previous meeting.
- Unfinished business.
- Public hearings.
- New Business.
- Communications and miscellaneous.
- Adjournment.

(Note: Although this is the usual order of business, the Board may wish to hold the hearings immediately after roll call in order to accommodate the public.)

APPLICATION/DECISION:

Each applicant for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Administrative Assistant of the Board of Adjustment, who shall record the date of receipt of over their signature.

Only a completed application, submitted prior to the posted deadline, will be accepted. A complete application shall consist of the following items:

- Completed and signed application form.
- Original signature authorization to proceed letter if applicant is not the property owner.
- Names and addresses of all abutters, property owners and other consultants, including legal counsel, if applicable.
- Mailing labels for all abutters, property owners, and other consultants, including legal counsel, if applicable, with each name/address appearing three (3) times. See application form for specific label size.
- Any letters of denial or other referral from other boards, committees, commissions or departments.
- Any related plans or deeds if required.
- Electronic/Digital copies of all listed items.
- All applicable fees

Appeals from an administrative decision taken under RSA 676:5 shall be filed within ~~twenty~~ **(20) thirty (30)** days of the decision.

At each meeting the Administrative Assistant shall present to the Board all applications received at least 10 days before the date of the meeting.

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All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.

Public notice of public hearings on each shall be pursuant to RSA 91-A. Notice shall include the name of the applicant, description of the property, to include Tax Map/Lot identification, action desired by the applicant, provisions of the Zoning Ordinance concerned, the type of appeal being made and the date, time and place of the hearing.

Personal notice shall be made by verifiable mail to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the Planning Board and other properties deemed by the Board to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.

~~(Note: Return receipt requirement deleted as of 7/26/1985. Continued use of this requirement by local regulations has not be clarified.)~~

APPLICATION FEES:

Application Fees are charged to cover the cost of legal noticing in a newspaper of local circulation as well as staff time involved in preparing notifications and meeting materials.

- *Application: \$125.00/application*
- *Verified Mailing Fee: Current USPS Certified/Return Receipt mailing costs, rounded up to the next whole dollar.*

Note: When more than one application (request for relief) is filed at the same time, the application fee shall be multiplied by the number of applications. However, since all applications will be noticed in the same verified mailing, the mailing costs are not multiplied by the number of applications.

PUBLIC HEARING:

The conduct of public hearings shall be governed by the following rules:

- The Chair shall call the hearing into session and ask for the Administrative Assistant's report on the first case.
- The Administrative Assistant shall read the legal notice.
- Members of the Board may ask questions at any point during testimony.
- Each person who appears shall be required to state their name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case.
- Any member of the Board, through the Chair, may request any party to the case to speak a second time.
- Any party to the case who wants to ask questions of another party to the case must do so through the Chair.
- The applicant shall be called to present their appeal, and those appearing in favor of the application shall be allowed to speak.
- Those in opposition to the appeal shall be allowed to speak
- The applicant and those in favor shall be allowed to speak in rebuttal.

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- Those in opposition to the appeal shall be allowed to speak in rebuttal.
- Any person who wants the Board to compel the attendance of a witness shall present their request in writing to the Chair not later than three (3) days prior to the public hearing.
- The Board of Adjustment will hear with interest any evidence that pertains to the facts of the case or how the facts relate to the provisions of the Town Zoning Ordinances and state zoning law.
- The Chair shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.
- The hearing on the appeal shall be declared closed and the Board will immediately deliberate on that case.

DECISIONS:

The Board shall decide each case within fourteen (14) days; the Board will approve, approve with conditions, deny the appeal, or defer its decision. Notice of the decision or deferral will be made available for public inspection, as required by RSA 676:3. If the appeal is denied or deferred, the notice shall include the reasons therefor.

RECORDS:

The records of the Board shall be kept by the Administrative Assistant and made available for public inspection at the Planning Office in accordance with statutory requirements.

Final written decision will be placed on file and available for public inspection after the decision is made public, pursuant to RSA 676:3.

REQUESTS FOR REHEARINGS:

~~Requests for rehearing must be submitted by any interested party within thirty (30) days of the decision of the Board. Fees for the renotification of the abutters of the rehearing shall be paid by the requestor and shall be submitted before the deadline for the next meeting.~~

All requests for re-hearing shall be made in compliance with RSA 677:2 and 677:3, and if granted, must also comply with the following:

- *If a re-hearing is granted, it will be scheduled for the next available meeting date*
- *The fees for any re-hearing request granted by the Board shall be the same as those for the initial application.*
- *Payment of the fees for any re-hearing are the responsibility of the re-hearing requestor.*
- *All fee payments shall be submitted before the published application deadline of the next meeting date.*
- *If payment is not received by the published application deadline date for the next meeting, the request for re-hearing shall be considered abandoned. (withdrawn with prejudice? dismissed with prejudice?)*

Minutes of all meetings, including the names of the Board members, persons appearing before the Board and a brief description of the subject matter, shall be open to public inspection pursuant to RSA 91-A.

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AMENDMENTS:

These rules of procedure may be amended by a majority vote of the members of the Board, provided that such amendment is read at two (2) successive meetings immediately preceding the meeting at which the vote is to be taken.